Supreme Court, U.S.
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APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1975

No. 75-235

G. M. LEASING CORP.,
Petitioner,

v.

UNITED STATES OF AMERICA, et al.,
Respondents.

ON WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

Washington, D.C. • THIEL PRESS • (202) 638-4521

[PETITION FOR WRIT OF CERTIORARI FILED AUGUST 13, 1975]

[CERTIORARI GRANTED DECEMBER 1, 1975]

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

Civil No. C-189-73

G.M. LEASING CORP.,
Plaintiff,

vs.

THE UNITED STATES OF AMERICA,
DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE,
ROLAND V. WISE, District Director,
JAMES M. LIVSEY, JOHN W. HAACKE,
GLENN S. HILTON, JOHN DOE I,
JOHN DOE II, JOHN DOE III, JOHN DOE IV,
AND JOHN DOE V,
Defendants.

vs.

GEORGE I. NORMAN, III,
Intervenor.

MOTION FOR INTERVENTION

COMES NOW George I. Norman, III, by and through his counsel, Richard J. Leedy, Attorney at Law, and respectfully move the above-entitled Court Pursuant to Rule 24(b)(2) *Federal Rules of Civil Procedure*, allowing him to intervene in the above-entitled action. This

motion is made on the grounds and for the reasons that the claims of the plantiff have common questions of law with the claims of the Intervenor and similar fact situations.

DATED this 7 day of June, 1973.

BOTTUM & LEEDY

By /s/ Richard J. Leedy
Richard J. Leedy

[Certificate of Mailing Omitted in Printing]

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MOTION TO STRIKE ALL CLAIMS FOR RELIEF REQUESTED BY PLAINTIFF'S AMENDED COMPLAINT OTHER THAN THE REQUEST FOR THE RETURN OF PERSONAL PROPERTY ALLEGEDLY WRONGFULLY SEIZED BY THE INTERNAL REVENUE SERVICE

Come now the defendants by their attorney, C. Nelson Day, United States Attorney for the District of Utah, and move this Court, pursuant to Rule 12(b) and (f), Federal Rules of Civil Procedure, to strike all claims for relief requested by plaintiff's Amended Complaint, other than the request against the United States for the return of personal property allegedly wrongfully seized from plaintiff by the Internal Revenue Service. As grounds for this motion, the United States would respectfully urge that this Court lacks jurisdiction over the sovereign, United States of America, which has not consented to be sued in this action, except insofar as plaintiff seeks return of

personal property allegedly wrongfully seized by the Internal Revenue Service.

Attached hereto in support of this motion is a memorandum of points and authorities.

C. NELSON DAY
United States Attorney
By:
U.S. Attorney

Copy of above Motion to Strike and of Memorandum of Authorities mailed to Richard J. Leedy, Esq., 10 Exchange Place, Suite 820, Salt Lake City, Utah, 84111, this 18th day of June 1973.

Mary Brockmuir
Secretary

[Caption Omitted in Printing]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO STRIKE ALL CLAIMS FOR RELIEF REQUESTED BY PLAINTIFF'S AMENDED COMPLAINT OTHER THAN THE REQUEST FOR THE RETURN OF PERSONAL PROPERTY ALLEGEDLY WRONGFULLY SEIZED BY THE INTERNAL REVENUE SERVICE

The plaintiff corporation, G.M. Leasing Corp., instituted the present suit against the United States, its agency, the Department of Treasury, Internal Revenue Service, and its employees, Ronald V. Wise, District Director of Internal Revenue, James M. Livsey, John W. Haacke and Glenn S. Hilton, in an effort to obtain: (1)

the return of, or in the alternative, the destruction of, photostats of the books and records seized by the Internal Revenue Service; (2) the return of certain automobiles seized by the Internal Revenue Service; (3) an order from this Court determining that the plaintiff corporation is not the alter ego, nominee or transferee of delinquent taxpayers, George I, or Frances M. Norman; (4) an order suppressing any evidence obtained from seizure of the books and records referred to above; (5) an order suppressing the seizure of automobiles as evidence and forever barring the defendants from ever seizing automobiles; (6) an order from this Court releasing all levies filed against the property of the plaintiff; and, finally (7) a judgment against the individual defendants in an amount commensurate with the damages inflicted by virtue of the invasion of the plaintiff's constitutional rights. In support of the jurisdiction of this Court to entertain this action, the plaintiff has allegedly Section 7426 of the Internal Revenue Code of 1954 (26 U.S.C., §7426). The defendants have moved to strike all claims for relief requested by plaintiff in its Amended Complaint except that request against the United States pertaining to the return of personal property allegedly wrongfully seized by the Internal Revenue Service. As grounds therefor, the United States has urged that this Court lacks jurisdiction over the sovereign, which has not consented to be sued herein except insofar as plaintiff is seeking a return of personal property allegedly wrongfully seized. This memorandum of points and authorities is respectfully submitted in support of that motion to strike.

ARGUMENT

THIS COURT LACKS JURISDICTION OVER THE SOVEREIGN, UNITED STATES OF AMERICA, WHICH HAS NOT CONSENTED TO BE SUED IN THIS ACTION, EXCEPT INSOFAR AS PLAINTIFF IS SEEKING A RETURN OF PERSONAL PROPERTY ALLEGEDLY WRONGFULLY SEIZED FROM PLAINTIFF BY THE INTERNAL REVENUE SERVICE

It is a firmly established and traditionally honored principle of law that the United States, as sovereign, is immune from suit except where Congress, by specific statute, has waived sovereign immunity. *United States v. Alabama*, 313 U.S. 274 (1941). In the absence of an express statutory waiver of sovereign immunity, a court lacks jurisdiction to entertain an action brought against the United States and the action must be dismissed. *Harkins v. United States*, 375 F.2d 239 (C.A. 10, 1967). Although plaintiff's Amended Complaint names, in addition to the United States of America, the Department of the Treasury,[1] Ronald V. Wise, District Director of Internal Revenue,[2] and other governmental employees[3]

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[1]The Department of the Treasury is not a legal entity subject to suit and the present action must be considered to be against the sovereign and may be maintained only if there is a waiver of sovereign immunity. *Vigil v. United States*, 293 F. Supp. 1176 (D. Col., 1968); and *Baumohl v. Columbia Jewelry Company*, 127 F. Supp. 865 (D. Md., 1955).

[2]Similarly, the rule of sovereign immunity cannot be circumvented by the mere form of denominating the District Director of Internal Revenue as a defendant. *Film Truck Service, Inc. v. Nixon*, 216 F. Supp. 77 (E.D. Mich., 1963); and *Jacobs v. District Director of Internal Revenue*, 217 F. Supp. 104 (S.D. N.Y., 1963).

[3]The remaining defendants, as governmental employees, are within the scope of governmental immunity and are not liable individually for actions within the scope of their employment. Accordingly, they must be dismissed from this action. *Bershad v. Wood*, 290 F. 2d 714 (C.A. 9, 1961); *O'Campo v. Hardesty*, 262 F. 2d 621 (C.A. 9, 1958).

as parties-defendant, it is clear that the present suit is maintainable, if at all, solely against the sovereign, since a determination is sought relative to the collection of taxes. *Dugan v. Rank*, 372 U.S. 609 (1963).

Plaintiff seeks to base jurisdiction of this Court to entertain the present action upon the provisions of Section 7426 of the Internal Revenue Code of 1954 (26 U.S.C., §7426). An examination of this statute will illustrate that it does not constitute the requisite waiver of sovereign immunity as would sustain this suit, except insofar as plaintiff is seeking a return of automobiles allegedly wrongfully levied upon.[4]

Section 7426 of the Internal Revenue Code of 1954 provides for the waiver of sovereign immunity in cases where the Internal Revenue Service seizes property which is not properly subject to the levy provisions of Section 6331 of the Internal Revenue Code of 1954 (26 U.S.C., §6331).[5] In *Sylk v. United States*, 28 A.F.T.R. 2d ¶71-5799 (E.D. Pa., 1971), the court reviewed the scope of Section 7426 and stated as follows:

> The legislative history of Section 7426 confirms that the section was to apply *only* where the government wrongfully levied upon [a third person's] property to satisfy the tax liability of another. S. Rep. No. 1708, 89th Cong. 2d Sess., P. 30 (1966) (Emphasis Supplied).

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[4]With respect to plaintiff's claim for relief of the return of the subject automobiles, the United States would admit that plaintiff has stated a cause of action as would confer jurisdiction upon this Court but specifically denies that the seizure was wrongful as to the plaintiff and will assert an answer to this effect.

[5]Further, under Section 7426(e) of the Internal Revenue Code of 1954 only the United States may be named as a defendant to an action for the recovery of property allegedly wrongfully levied upon.

It can be seen, therefore, that the scope of the waiver of sovereign immunity contained in Section 7426 is very narrow and this section cannot be construed as conferring jurisdiction upon this Court to grant the various claims for relief requested by the plaintiff. Accordingly, as the plaintiff's complaint seeks relief other than the return of the subject automobiles, this Court is without jurisdiction to grant such requests.

Further, there is authority which prohibits the other relief requested by the plaintiff. With respect to its request that this Court enter an order declaring that it is not the alter ego, nominee or transferee of the deliquent taxpayers, George I and Frances M. Norman, and with respect to its request for an order suppressing evidence, it is clear that such relief is specifically prohibited by the provisions of Section 2201 of Title 28, United States Code, popularly referred to as the Declaratory Judgment Act, which provides that the federal courts may make declarations as to the rights and legal relations of the parties "in a case of *actual controversy* within its jurisdiction, *except with respect to Federal taxes*." (Emphasis Supplied.) In accordance with this unambiguous language, the courts have consistently ruled that a declaratory judgment cannot determine federal tax liability. *Mulcahy v. United States*, 385 F.2d 380 (C.A. 5, 1968); *Taylor v. Allan*, 204 F.2d 485 (C.A. 10, 1953); and *Wilson v. Wilson*, 141 F.2d 599 (C.A. 4, 1944). Thus, this Court cannot order suppression of any evidence since there is no *actual controversy* in which the evidence is sought to be introduced and similarly this Court cannot declare the plaintiff is not liable for federal taxes. Finally, with respect to plaintiff's request for a judgment against the individual defendants, such relief is expressly prohibited in the absence of a showing that such actions

complained of were taken outside the scope of their employment (See, authority cited in footnote 3, supra).

For these reasons, the relief requested in plaintiff's Amended Complaint should be stricken, with the singular exception of its request for relief against the United States for the return of the automobiles allegedly wrongfully seized by the Internal Revenue Service.

Respectfully submitted,

C. NELSON DAY
United States Attorney

By:
U.S. Attorney

[Caption Omitted in Printing]

ORDER

The defendant's motion to strike portions of plaintiff's complaint and plaintiff's motion to compel answers to oral interogatories and intervenor's motion to intervene came on regularly for hearing, pursuant to notice, on the 26th day of July, 1973, the plaintiff and intervenor were represented by counsel, Richard J. Leedy, Attorney at Law, and the defendants were represented by Counsel, C. Nelson Day and Michael B. Andolina, the Court heart arguments on the motion and informed counsel that he would not rule on the motion to compel answers, but indicated that he wanted broad discovery with no obstructions and that if further refusal to answer were had the depositions would be taken in open court and after hearing argument on the motion to intervene and motion to strike, the Court:

ORDERED that George I. Norman, III be permitted to intervene in this action; and

Defendant's motion to strike portions of plaintiff's complaint is denied.

DATED this 8 day of August, 1973.

BY THE COURT:

/s/ Willis Ritter
J U D G E

January 9, 1974 — Judge Ritter

G.M. Leasing Corporation
vs
United States of America,
Dept. of Treasury, et al. — C 189-73

This matter came on before the court at 10:00 a.m. for calling of calendar and court trial. Richard J. Leedy, Esq. appeared for the plaintiff. C. Nelson Day, Esq., United States Attorney, appeared for the defendant.

Counsel indicated their readiness for trial. This matter to be tried in sequence as listed on the calendar.

January 11, 1974

This matter came on before the court at 2:00 p.m. for court trial. Richard J. Leedy, Esq. appeared for the plaintiff. James M. Dunn, Esq., Assistant United States Attorney, Michael B. Andolini, Esq., Gary Sims, Esq. and Durrell Nielson, Esq. appeared for the defendants.

Mr. Dunn moved the admission of Gary Sims, Esq. and Durrell Nielson, Esq. for the purpose of this case only. Motion granted.

Opening statements were made by Messers. Leedy and Andolini.

Mr. Leedy called defendant, Bert Applegate, who was sworn and testified. Plaintiff's exhibit No. 1 was marked, offered, and received. Counsel stipulated that the defendants named in the complaint are all employees of the Internal Revenue Service who participated in the search and seizure. Mr. Leedy moved for the publication of the deposition of Bert Applegate. Motion granted. Mr. Leedy called defendant, Phillip James Clayton, who was sworn and testified. Plaintiff's witnesses; Cloyd Wangsgard and George Henry, were sworn and testified in order.

The hour of adjournment having arrived, court adjourned to Monday, January 14, 1974 at 10:00 a.m.

January 14, 1974

Trial resumed at 10:00 a.m. with counsel and parties as heretofore listed present.

Mr. Leedy called the intervenor, George I. Norman, III, who was sworn and testified in his own behalf.

Plaintiff rested, indicated that the defendant had the burden of proof on the alter ego theory.

Defendants' witness, Leland Black, was sworn and testified. Defendants' exhibit D-1 was marked and offered; said offering was objected to by the plaintiff and the objections sustained by the court. Defendants' witnesses; Albert A. Wahlberg, Richard Head, Katharine Head, Wallace Eddie Larrabee, and Shirley P. Jones, Jr., were sworn and testified in order. Defendants' exhibits D-2, D-3, and D-4 were marked, offered, and received. Defendants' witnesses; Floyd LaMar Moody and LaVar Lloyd Wood, were sworn and testified in order. Defendant, James M. Livsey, was sworn and testified in his own

behalf. Defendants' exhibits D-5, D-6, and D-7 were marked and offered; said offerings were objected to by the plaintiff and the objections sustained by the court and the exhibits not received; defendants' exhibits D-8 and D-9 were marked, offered, and received. Defendant, Keith Finley, was sworn and testified in his own behalf. Defendants' exhibit D-10 was marked, offered, and received.

The hour of noon having arrived, court recessed to 2:00 p.m.

Court reconvened at 2:00 p.m. with counsel and parties as heretofore listed present.

Plaintiff's exhibits Nos. 2, 3, and 4 were marked, offered, and received. Defendant, Clesse B. Hilton, was sworn and testified in his own behalf. Defendants' witness, John C. Greene, was sworn and testified. Defendants' exhibit D-11 was marked and offered; said offering objected to by the plaintiff. Counsel stipulated relative to this document. The court received the stipulation of counsel and the document was not received. Defendants recalled Phillip James Clayton for further testimony.

Defendants rested.

Arguments of counsel to the court were heard.

The court directed that memoranda be prepared contemporaneously supporting their respective positions fifteen (15) days after receipt of the reporter's transcript; counsel then allowed five (5) days thereafter in which to file reply memoranda. The court to set this matter down for oral hearing thereafter.

hs

cc: Richard J. Leedy, Esq., 10 Exchange Place, Suite 309, SLC
C. Nelson Day, Esq., U.S. Attorney, 200 Courthouse Bldg., SLC

[Caption Omitted in Printing]

APPLICATION FOR STAY PENDING APPEAL

The United States of America and the other defendants named in the above-entitled matter, hereby move the Court for it's Order staying the Judgment heretofore made and entered in this matter by the Court on May 24, 1974, pending appeal of this matter to the United States Court of Appeals for the Tenth Circuit upon the following grounds and for the following reasons:

1. A notice of appeal to the United States Court of Appeals for the Tenth Circuit has been filed in this matter by the defendants.

2. Demand has now been made upon the defendants by Richard J. Leedy, attorney for the plaintiff, and by George I. Norman, III, for delivery of one or more of the automobiles referred to in the said Judgment.

3. The said automobiles are now stored in a secure and proper garage and if one or some of them were permitted to be removed the defendants would, or could, suffer immediate and irreparable loss and damage.

4. This application for Stay of proceedings is made under the provisions of Rule 6, Rules of Civil Procedure.

C. NELSON DAY
United States Attorney

[Certificate of Service Omitted in Printing]

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ORDER STAYING JUDGMENT

Application having been made to the Court for stay of judgment heretofore made and entered in this matter on May 24, 1974, and it appearing that the United States of America and the other defendants have filed Notice of Appeal herein to the United States Court of Appeals for the Tenth Circuit, and good cause appearing therefor,

IT IS HEREBY ORDERED that the Judgment heretofore made and entered in this matter by stayed and that no action be taken by either the plaintiff or the defendant with regard to any of the property referred to in said Judgment, pending the Appeal in the Court of Appeals or until the further Order of the Court.

DATED this 31 day of May, 1974.

/s/Willis Ritter
CHIEF JUDGE
WILLIS W. RITTER

[Caption Omitted in Printing]

NOTICE OF APPEAL

The United States of America, and the other defendants named in the above-entitled matter, hereby appeal to

the United States Court of Appeals for the Tenth Circuit from the Judgment heretofore made and entered in the above-entitled matter by the United States District Court for the District of Utah on May 24, 1974.

DATED this 31st day of May, 1974.

/s/C. Nelson Day
C. NELSON DAY
United States Attorney

[Certificate of Service Omitted in Printing]

SUPREME COURT OF THE UNITED STATES

No. 75-235

G.M. Leasing Corp., et al.,
Petitioners,

v.

United States, et al.

ORDER ALLOWING CERTIORARI. Filed December 15, 1975

The petition herefor a writ of certiorari to the United States Court of Appeals for the Tenth ------- Circuit is granted, limited to Question 2 presented by the petition which reads as follows;

"2. Whether tax agents of the United States acted illegally in seizing automobiles and documents in violation of the petitioner G.M. Leasing Corporation's Fourth Amendment rights under the Constitution of the United States."

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

[January 11, 1974]

[4] MR. LEEDY: This case involves the family of a man who is now a fugitive from justice and their assets. This man is Mr. Norman, who left the jurisdiction of the court in approximately March of 1973, needless to say, leaving his family in somewhat destitute circumstances.

* * *

[5] The corporation maintained offices at 4751 and 4753 Holladay Boulevard. It is a place which is sometimes referred to as the "Cottage" and was the offices of G. M. Leasing Corporation, several other family corporations, and also the office of George Norman.

* * *

[8] MR. ANDOLINA: May it please the Court, your Honor, basically the present action is a suit for wrongful levy against the United States of America.

The subject property which was levied upon was nine automobiles—I won't call them "antique" because some [9] of them are brand-new—they are very fine, rare automobiles that are worth a lot of money.

They were, concededly, in the title of the plaintiff corporation. The United States doesn't deny that.

The information, after a long and thorough investigation and interviewing many witnesses—the information available to the Internal Revenue Service was that the C. M. Leasing Corporation never did any leasing; it was just an alter ego of the taxpayer George I. Norman.

Accordingly, after many deliberations, it was felt that under a levy for the taxes of George I. Norman the subject automobiles could be seized, and they were in fact seized.

The issue as to the automobiles is simple: Who owns the cars? Are they George I. Norman's or were they the

property of the plaintiff corporation, which was a viable corporation, independent of George I. Norman?

The United States will attempt to show, and I think we will be able to show, from testimony of former officers and employees of the corporation that there was never any intention to do business; in fact, no business was ever done. Not one car was leased. They never did any type of business for which they were incorporated. In fact, the board of directors did not meet. No stock was issued. In the Government's view this was a sham transaction.

[10] Secondly, your Honor, and I think more important for our purposes, is the action for damages against the individual Internal Revenue Service agents.

This is a point in time in our history where I think it is very popular to be down on the Government and down on the Government agents and to be worried about Constitutional rights. I certainly agree that Constitutional rights should be safeguarded, but I also agree that conscientious men doing their jobs should not be subjected to personal damages.

We will show that the Internal Revenue officers and agents involved in this case, after very thorough deliberation and upon advice of counsel, were of the opinion that the premises that were seized were as assets of a taxpayer corporation real estate and which we also felt was the alter ego of George I. Norman.

Apparently the premises were investigated, and we found out after one night that some of the assets were missing. In order to prevent losing the assets again, we went in to seize the assets, not books and records, the assets.

It turned out, as they seized the furniture and other tangible assets, that there were books and records.

The testimony will show that the books and records were packed up without being looked at. The reason they

[11] packed up the books and records was because, while the books and records may not be considered tangible assets which can be seized by a levy, we do—and oftentimes it has been done—investigate the records to see if there are stock certificates, money, other accounts receivable. So in that sense they were seized. But the Internal Revenue agent who made the assessment against Mr. Norman will testify that this information that was seized did not in fact influence him in making his assessments, which were in fact made before the seizure.

The United States has also answered the allegations of the complaint and counterclaimed. We have asked this court to hold with us that the plaintiff corporation is in fact an alter ego of George I. Norman, and we ask that the cars may be sold in satisfaction of Mr. Norman's liability.

Finally, with respect to the claim in intervention, the son of the taxpayer, George I. Norman, III, the plaintiff in intervention in this case, apparently had received some stock from a certain Mr. Salazar, who is now incarcerated in the federal penitentiary.

Mr. Salazar has made representations to the United States Marshal and to the Internal Revenue Service that he in fact never transferred any stock certificate, and it was his opinion that George I. Norman, Jr., father [12] of the intervenor, had signed his name on these, as he had done in the past.

So the picture that plaintiff's counsel paints of the IRS "swooping down and grabbing everything in sight" I don't think is accurate. They are doing their job. They looked for assets.

* * *

BERT APPLEGATE

called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEEDY:

Q. State your name, please. A. Bert Applegate.

Q. And your address? A. 1810 South Main Street, Salt Lake City, Utah.

Q. Are you employed, Mr. Applegate? A. Yes, I am.

Q. By whom? A. The Internal Revenue Service.

Q. What is your position with the Internal Revenue Service? [13] A. I am a group manager.

Q. What is the particular group that you manage? A. It is a group of revenue officers in the Salt Lake City District.

MR. LEEDY: Your Honor, prior to proceeding—I had forgotten two matters. The defendants are willing to stipulate to the introduction of this exhibit.

THE COURT: What is the number?

THE CLERK: No. 1.

MR. LEEDY: Plaintiff's Exhibit 1, your Honor, which is a certification from the Secretary of State's office that G. M. Leasing Corporation is in good standing, together with certified copies of their articles of incorporation.

THE COURT: Received.

(The document marked Plaintiff's Exhibit No. 1 for identification was received in evidence.)

MR. LEEDY: Further, your Honor, the defendants are willing to stipulate that the named individuals in the complaint, the named defendants in the complaint, with the exception of Roland Wise, are all employees of the Internal Revenue Service and all participated in the search and seizure at 4751-4753 Holladay Boulevard.

MR. ANDOLINA: That is correct.

THE COURT: Very well.

[14] Q. (By Mr. Leedy) Mr. Applegate, calling your attention to March 21 of 1973, did you have occasion to be at the premises of 4751-4753 Holladay Boulevard? A. Yes, I believe I was. I believe that was the date.

Q. What occasioned you to go out to that place? A. I had a call from two of my revenue officers—I believe that was two. They were at the premises investigating the Norman case, and they requested me to come out and give them some assistance.

Q. And they indicated at that time that they had broken the locks to the garage door, is that correct? A. At the time they called me they didn't indicate that, no.

Q. Did they indicate that they had found anything at the premises? A. Yes. They indicated that they had found high-priced automobiles in the garage and were contemplating what to do about the building and perhaps seizing the assets of the building there.

Q. Do you recall the names of those two individual revenue agents who called you? A. I believe it was John Haacke and Joe White.

Q. Prior to going to the premises did you obtain a search warrant or a summons? A. No, I did not. It is not common practice for us to use these.

[15] Q. Did you eventually arrive at the premises? A. Yes, I did.

Q. About what time was that? A. I am just estimating, maybe around four o'clock.

Q. And prior to going did you call certain persons to accompany you? A. No. Clesse Hilton, who was in the office at the time—another revenue officer was there, so he decided to accompany me out there.

Q. When you arrived, who was present? A. There were several people there. John Haacke and Joe White were

there. There were some locksmiths there, two or three people I didn't know. Later other people came.

Q. And later other people from the IRS came, did they not? A. This is true.

Q. When you first arrived, what did you observe? A. I observed, like I say, several people milling around. There was a maroon Stutz car in the garage. I believe it was maroon. It might have been blue or a different color, I am not sure. The locksmiths were there, and people were just there.

Q. Had the garage been broken into at that time? A. Yes, the garage had had the lock removed from it by the locksmiths, and the door was open.

Q. There were no windows in the garage so you could observe [16] the contents without breaking the locks, were there? A. This I am not sure of. I couldn't testify to that.

Q. Thereafter was a decision made to break the locks on the cottage door and enter into the premises? A. This was done prior to my getting there. But the house had been entered into by the locksmiths, and that was just momentarily before I got there.

Q. Upon arriving there did you have occasion to have a conversation with anyone concerning what might be in the cottage? A. Yes, sir, I did.

Q. Who was that? A. I believe it was Mr. Haacke and perhaps Mr. White, and I think maybe there was a special agent there, too. I am not sure.

Q. And you also had occasion, did you not, to have a conversation with a Mr. Leon Ridd while you were there? A. Yes, I did.

Q. And from those conversations you learned, did you not, that the cottage contained personal records of the taxpayer and also of the plaintiff corporation? A. No, I didn't obtain that information from them. In fact, I

didn't know that information at all. I merely made observations myself and then made a decision as to what perhaps we should do.

[17] Q. Well, was it your own observation that the cottage contained books and records that were personal to the taxpayer and the plaintiff corporation? A. I have no idea what was there. I didn't look at any books and records. All I could do was observe the general surroundings.

MR. LEEDY: Your Honor, I would move to publish the deposition of Bert Applegate, if I may.

THE COURT: All right, it may be published.

Q. (By Mr. Leedy) Mr. Applegate, I call your attention to your deposition taken September 19, 1973, at my office and ask if you recall giving that deposition. A. Yes, I do.

Q. I will ask you to turn to page 16 of that deposition and ask if you want to revise your testimony concerning whether or not you felt there were personal records in that premise. A. Which paragraph are you referring to?

Q. Start on line 8, with that answer. A. I don't think I need to revise my statement. This clarifies it more than what I have generally said.

Q. Do you want to add to it then? A. About talking to Mr. Ridd?

Q. About finding out whether or not the cottage contained personal records of business transactions of the taxpayer. A. Well, all I can say is we did not look around; we did not [18] look at the records; we could observe—

THE COURT: This isn't very useful to me, Mr. Leedy. I don't know what the thing says, so I think the way to proceed—and we do it ordinarily—is to read what that deposition says to him and ask him if he made those answers at that time in response to those questions, and then I will know what we are talking about.

MR. ANDOLINA: Your Honor, if it please the Court, I have an extra copy.

THE COURT: No, I want to proceed in our own way.

Q. (By Mr. Leedy) Commencing on line 8 of that deposition, Mr. Applegate, did you answer:

"Okay. But you might be interested in this. I'm not sure if there is a window there or not so they could see that there was a car. I don't know this. But they had determined that there was this car in there, so I believe that they cut the lock off. In fact, Mr. Norman was—George Norman, III, was excited about the removal of his lock. We talked to Mr. Ridd and found out a lot of information about the premises.

"Question: What information did you find out from Mr. Ridd?

"Answer: We asked him what the place was used for. He indicated it was the offices, or the place where Mr. Norman had offices, sometimes employees, and that's [19] where he was and carried out much of his business."

Was that your answers to those questions? A. That is true. We interviewed Mr. Ridd.

Q. In reading that answer it appears you had occasion to talk to Mr. George Norman, III, the intervenor in this action, while you were at the premises, is that correct? A. This is true.

Q. Will you tell me what occurred then. A. Yes. He arrived shortly after I did and wanted to know what was going on. And, again, this has been ten or eleven months ago. It is hard to remember exactly what took place. But he wanted to know what we were doing there also. I told him we were seizing the car and contemplating seizing the assets there in the building structure. At that point he was quite upset about our cutting off one of the

expensive locks, or the locksmith's removing the lock. I don't know how they removed it. He also said, "Well, this car belongs to G. M. Leasing, which is a corporation," as I remember.

I asked him if he could get the title and the registration of the car so we could see how it was registered, at which time he looked for it and couldn't find it. There was quite a lot of question at that time as to the ownership of the car and other things surrounding our being there, so at that point I talked to him and indicated: Would he please get us a copy of the registration so we [20] could verify ownership of the car. He said he would. At that point we left from the premises, or shortly thereafter.

Q. Well, now, you were in the premises, inside, the interior of the cottage, or the offices of the plaintiff corporation, and you made a decision that you should leave those premises, too, is that correct? A. Well, I did.

Q. And what did you base that decision on? A. We were two days into an investigation at this point, and we had several things probably at that point which indicated that we should take actions that we were taking. It was our understanding, or at least the people who originally opened up the building—and I wasn't there—that this was an office building, it contained assets, perhaps furniture, high-priced things, cash, stock certificates, assets belonging to the taxpayer. It was determined that it was not a residence, that it was a business that had nobody there, may contain valuable assets, and they should go ahead and make the seizure of the assets to protect theproperty.

At the time I got there I walked in and it looked to me like this perhaps was the case, but so much was happening at that point. They just went in. There was a

room there with a table in it, had a stove and an icebox, so I said, "You are sure this is not a personal residence?"

He said, "Yes, we are sure it is not. It is an [21] office," etc.

About that time George Norman, III, came along, Mr. Ridd came along, a lot of talk going on. To tell you the truth, I wanted to be sure of what we were doing and to not violate anybody's Constitutional rights by seizing anything we shouldn't be seizing. So I said, "You guys, until we can resolve all this, let's lock the doors up again and leave," which we did, along with everybody else. I don't think we were in the building more than a very few minutes.

Q. You had the locks changed back to the original locks, is that correct? A. Yes, we did.

Q. Thereafter, you or someone in the Internal Revenue Service made a decision to have another raid of the cottage, is that correct? A. A seizure was again made of the same place two days later but it was not a raid.

Q. How many agents were there? A. I am not sure. I was not there. I specifically assigned two people to go there, two or possibly three.

Q. And partially your reason for going out there to seize the premises was to seize the personal books and records of the taxpayer, is that correct? A. No, that is not correct. There were several things [22] leading up to the decision to seize the house. It was all done at the advice of our counsel after much discussion of several factors, but it was not specifically to seize books and records at all.

Q. That wasn't even a portion of your going out to make that seizure? A. No. It possibly could have had a residual thing, since we were there, there they were; as was stated before, they could be valuable in uncovering assets, books and records. But, at the advice of our

counsel, once we found the books and records there, these were boxed up, sealed, and put in a vault at Redman Moving and Storage without being examined.

Q. So, if they weren't going to be examined, you knew you couldn't find any assets in them, isn't that correct? A. Well, we weren't going to release them. We thought possibly we could look at them later, once we got clearance through proper authority or people on the case.

* * *

[24] PHILIP JAMES CLAYTON

called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEEDY:

Q. State your name, please. A. Philip James Clayton.

Q. And your address? A. 919 Fairview Avenue, Salt Lake City.

Q. Are you employed, Mr. Clayton? A. Yes, I am.

Q. In what capacity? A. A revenue agent with the Internal Revenue Service, Salt Lake City District.

[25] Q. What does a revenue agent do? A. Investigates tax liability through audit of taxpayer's records or through independent third-party sources.

Q. Did you have occasion to perform an audit on Mr. George I. Norman, Jr., and his wife Frances Norman? A. No, I did not perform an audit in the usual sense of the word.

Q. Did you perform an examination? A. I was given the assignment to investigate the tax affairs of Mr. Norman after we had found out he was a fugitive and after we had also found out he had not filed tax returns for 1970 and 1971.

* * *

Q. You performed this same sort of function, did you not, on Mr. Norman for the years 1964 through 1967? A. That is correct.

Q. And in connection with that audit, the 1964 through 1967 audit, you discovered, did you not, that Mr. Norman had extraordinary business expenses in connection with his business? A. That is correct.

* * *

[28] Q. You prepared the assessments, did you not, of 1971 which are in question in this lawsuit? A. Yes.

Q. In connection with those assessments you gave Mr. Norman no credit for any business expenses, did you? A. That is correct.

Q. But you found out through your prior audit that he had extraordinary business expenses, did you not? A. Yes, he had, I would say, high business expenses, perhaps in relation to his income, yes.

Q. And most of the items of income you found on your 1970-71 audit was from the sale of securities, is that correct? A. That is correct.

Q. And yet on many of those sales of securities you gave him no credit or basis on the stock, is that correct? A. I think the majority of the stock that he sold in 1970 and '71 we did give him basis. There were some stocks we did not give him basis since we could not determine that basis.

Q. On some of those stocks you had already determined what the basis was in your prior audit, is that not correct? A. No, that is not correct.

* * *

[29] Q. You were also aware, were you not, of some 290 thousand dollars Mr. Norman had paid for taxes in 1971 for the year 1971, isn't that correct? A. That is correct.

Q. But you gave him no credit for that 290 thousand when you prepared the assessment, isn't that correct? A. The Service Center had received that payment but had not made the assessment up at the Service Center. Mr. Norman, was told by the Service Center, would get credit for that upon payment of the tax. The assessment had not been made, so, no, we did not give him—take into consideration that payment.

Q. And when the demand for payment was made on Mrs. Norman it did not reflect the fact that Mr. Norman had already paid [30] 290 thousand dollars, is that correct? A. Well, in the sense that you state that, yes.

Q. You also had found out, had you not, that certain of the items you included as sales of stock, and particularly one for 115 thousand dollars, was not in fact a sale, isn't that correct? A. That is correct.

Q. After making your assessment, Mr. Clayton, were you the one who recommended that this would be a jeopardy assessment? A. No.

Q. Who made that recommendation? A. I believe that authority has to come from Mr. Roland Wise, our district director.

Q. But who requested that he make that determination? A. That request was made by the chiefs of our various divisions.

Q. Did you request that the chief of your division determine that this be a jeopardy assessment? A. I asked that he investigate the possibility, yes.

Q. After the assessment and the declaration of the jeopardy assessment you went on the raids, did you not? A. No. I participated in one of the seizures, but I was not involved in both of them.

Q. Well, you entered 4751-4753 Holladay Boulevard, did you [31] not? A. Yes.

Q. Mr. Clayton, your job is to investigate tax liabilities. Why did you go along on that raid? A. I was requested by Special Agent Tim Elison, who was the investigating officer for the Intelligence Division, to accompany him on the seizure.

Q. Isn't this highly unusual for a man in your position with the Internal Revenue Service? A. This was a very unusual case, might I add.

Q. Will you answer my question. A. Yes, I would think it is somewhat unusual.

Q. Have you ever gone on a seizure raid before? A. No.

Q. Did you have occasion to look at the evidence and the books and records that were seized? A. Some three to four months later, yes, when we received permission from our counsel to open them.

Q. Let me ask you this, Mr. Clayton: Were you involved in the first entry or the second entry into the cottage? A. It would be the second entry.

Q. Can you give me the date? A. I believe it would be March 23, Friday.

Q. Will you tell me when it was that you arrived at the cottage. [32] A. It would have been approximately 1:45 or two o'clock.

Q. Were you one of the first to arrive or were people already there? A. There were individuals already there.

Q. How many Internal Revenue Service agents in total participated in this raid? A. There were two revenue officers that were there at the office building of the Razor Edge because of an automobile that was in the garage at the front there, in front of the cottage. That was Revenue Agent Haacke and Revenue Agent Joe— Revenue Officer Haacke and Revenue Officer Joe White. I was in the presence of Special Agent Tim Elison. Special

Agent Ron Harrington and Special Agent Tom Harkness and Special Agent Lawnie Mayhew were there also.

Q. In addition to that had not the Internal Revenue Service called locksmiths to also be there? A. Yes. Some locksmiths came later.

Q. In addition to that did they not also call a semitruck to load all the items that they seized into— A. No. It was a Redman Storage van.

Q. After arriving there can you tell me what occurred. A. Yes. We waited outside until the locksmiths came and opened the premises, and then I was told that we had received instructions from our counsel to seize the property therein, including any books and records which might be [33] present, which was one of the reasons I was there for.

Q. You were there for the purpose of seizing the books and records? A. If there were any, yes.

Q. You had already been advised, though, hadn't you, the books and records were to be sealed? A. We were given instructions that, if there were any records present in the office, that we were not to look at them or investigate them, but we were to wait until the Redman Van and Storage came and then put them into their boxes, with their assistance, and have them seal them.

Q. If the boxes were going to be sealed and no one was going to look at them, why were you out there? A. I guess to assist with putting the records in. Also, as I mentioned, I was requested to attend with Special Agent Tim Elison.

Q. Did you ever have occasion to go to the Norman residence? A. No. Do you mean prior to this time?

Q. No. In connection with this. A. Yes. Upon returning the records some several months later, yes.

Q. That was the day after I filed the complaint in this case isn't that correct? A. I am not aware of when that would have been.

Q. And prior to returning those records did you not open [34] them up and copy them? A. Yes. We were asked by our counsel to photocopy the records, this is true.

Q. Then you have had occasion to look at those records that were sealed, have you not? A. After that time, yes.

Q. You have also decided, have you not, that there should be additional income in the 1971 assessment that you made against Mr. Norman? Isn't that correct? A. That is correct.

Q. Didn't that information come from looking at those seized records? A. No, it did no

MR. LEEDY: I think that is all.

CROSS-EXAMINATION

BY MR. ANDOLINA:

Q. Did George Norman file a return in 1971? A. No, he did not.

Q. What information did you use to base that deficiency on? A. I based my deficiency upon an examination of third-party records, from brokerage statements of stock firms.

Q. Were you able to get any cooperation at all from the taxpayer? A. No.

Q. When was the assessment made against Mr. Norman? [35] A. It would have been on Monday, March 19, 1973.

Q. Did you use any portion of the seized books and records in making your assessment? A. No, I did not.

Q. Have you since used any portion to re-evaluate? A. No, I have not.

Q. Can you tell me how many—the extent of the books and records of G. M. Leasing that were seized? A. The extent of the books and records of G. M. Leasing

that I am aware of consisted of a few documents as to ownership of the vehicles and then one bank account consisting of only a very few checks that were written on the bank accounts.

Q. So there weren't books and records? A. There were not.

* * *

[38] GEORGE HENRY

called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

[39] DIRECT EXAMINATION

BY MR. LEEDY:

Q. State your name, please. A. My name is George Henry.

Q. And your address? A. 3662 Oakview Drive.

Q. Are you employed. Mr. Henry? A. Yes, sir.

Q. And by whom? A. By the Internal Revenue Service.

Q. And are you acquainted with the individual defendants in this action? A. I am acquainted with Mrs. Norman and George, Jr.

Q. I said the defendants, the Internal Revenue Service. A. Oh, yes.

Q. You are also acquainted with Mr. Tuttle, who is an officer of G. M. Leasing Corporation? A. I am acquainted with Mr. Tuttle. I was not aware that he was an officer of G. M. Leasing.

Q. Are you aware of the arrangement made by the IRS where, after seizure of all the cars, they were to allow Mrs. Norman to use one of the cars? A. Not an arrangement. I was aware—

THE COURT: Tell us what happened.

THE WITNESS: What happened?

[40] THE COURT: About that.

THE WITNESS: Well, I know Mrs. Norman was driving a Jaquar.

Q. (By Mr. Leedy) Are you aware of a later decision to take that car away from her? A. Yes, I am aware it was taken away.

Q. Did you overhear some revenue officers talking about taking that car away from her? A. I overheard that they had taken the car away from her.

Q. And is it not true that they laughed about the harassment that they were causing her? A. There was laughter.

* * *

[January 14, 1974]

[45] GEORGE I. NORMAN, III

called as a witness on behalf of the plaintiff, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEEDY:

Q. State your name, please. A. George I. Norman, III.

Q. Your age? A. Nineteen.

Q. And your address, Mr. Norman? A. 2501 Olympus Drive.

Q. And are you the intervenor in this matter? A. Yes.

Q. And were you the owner of certain Emdeco stock that was seized by the Internal Revenue Service? A. Yes.

Q. And where was that stock seized? A. At Atlas Stock Transfer Agency.

Q. Do you know how many shares it was? A. Yes. Seven thousand one hundred forty-three shares.

[46] Q. What was the market value of that stock on the date of the seizure? A. Thirty-five hundred dollars.

Q. Are you acquainted with the plaintiff in this action, G. M. Leasing Corporation? A. Yes, I am.

Q. In what capacity are you acquainted with it? A. I am a shareholder and president of G. M. Leasing Corporation.

Q. Are you aware of where G. M. Leasing Corporation maintained its offices in March of 1973? A. Yes.

Q. Where was that? A. At 4753 Holladay Boulevard.

Q. And are you acquainted with what the assets of that corporation were on that date? A. Yes.

Q. What were those assets? A. A two-door Stutz blue motor car, a two-door tan Stutz blue motor car, a four-door Stutz burgundy motor car, a two-door Stutz burgundy motor car, a Rolls Royce 1965 limousine, a 1929 Rolls Royce Phantom I, and a 1972 Jaguar sedan.

Q. Did it also maintain a bank account? A. Yes, it did.

Q. Where was that? [47] A. At Zions First National Bank.

Q. And were there funds in that bank account? A. Yes, there were.

Q. And were the assets of G. M. Leasing Corporation seized by the Internal Revenue Service? A. Yes, they were.

Q. Do you know where those assets are now located? A. Yes. Two assets, the four-door Stutz motor car and the two-door Stutz tan car is in California. That was turned over by the Internal Revenue to Murray First Thrift for liquidation on a chattel note. And the remaining four cars are over at the Broadway Motor Garage.

Q. I assume the funds are still in the bank. A. The bank seized the funds.

Q. Do you have a value you would place on the two cars that were sold by Murray First Thrift pursuant to the IRS levy? A. Yes. The two-door tan has a value of $30,000, and the four-door Stutz burgundy has been quoted at a hundred thousand dollars.

Q. Calling your attention to March 21 of 1973 did you have occasion to be in the vicinity of 4751-4753 Holladay Boulevard? A. Yes.

Q. What time of the day was that? A. I believe that was in the afternoon?

[48] Q. What did you observe, if anything? A. As I drove up to the office, I noticed several agents about the grounds. As I stepped out of the car I was approached by four agents. Mr. Applegate presented himself as the head of the assessments division and told me he was there to seize assets of George Norman, Jr.

The cottage door was standing open and the garage had been broken into. There was a locksmith inside the garage attempting to hotwire the Stutz motor car.

Q. Did you have a conversation with Mr. Applegate at that time? A. Yes. I told Mr. Applegate this was an asset of G. M. Leasing Corporation and that it was not an asset of George I. Norman, Jr. Mr. Applegate replied that he would like to see the registration. I looked inside the car. The registration was not there. And upon that he left.

Q. What next occurred with respect to matters involving this lawsuit? A. I made a request as he left for the lock that was concealing the Stutz car in the garage. He did not know where it was and gave me a lock, which he held a key and gave the key to me. Upon this--after the Internal Revenue left, I removed the car from the garage and had it stored at a friend's house.

* * *

[49] Q. The following day did you have occasion again to be near the office of G. M. Leasing Corporation? A. Yes.

Q. What did you observe, if anything, at that time? A. Friday I was returning back to the office, which is also my residence. I was living there as security. The cottage had been broken into. Furniture was being packaged. The

office had been broken into. The records had been removed. And I was told to take my personal possessions and move out.

Q. Did you do that? A. Yes, I did.

Q. Where did you move to? A. I moved up to my father and mother's residence.

[50] Q. That is 2501 Olympus Drive? A. Yes, 2501 Olympus Drive.

Q. Did you have occasion to be confronted by the IRS at that residence? A. Yes. Saturday.

Q. That is the following day? A. Yes.

Q. Tell me what occurred. A. Seven cars pulled up. Fourteen agents, I noticed, in total were out of the cars. They were approaching the front entrance of the house, did it in such a manner as to where they were probing the locks. I was told that, if I did not come up with the burgundy Stutz car, I would be charged and thrown in jail and that the house would be seized and my mother and the children of the family would have to find residence elsewhere.

Q. In response to that threat did you inform them of the location of the burgundy Stutz? A. Yes.

Q. What happened next? A. The Internal Revenue agents made a request that they would like to inventory the house and, if I did not permit them, they were going to anyway.

Q. Did you then allow them to inventory the house? A. Yes, I did.

[51] Q. Will you describe what occurred. A. It was done in such a manner as to where they brought in different various small tape recorders where they verbally went about and described the accessories in the house and photographed the furniture, the paintings, etc.

* * *

[64] RICHARD HEAD

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. State your name, please. A. Richard Head.

Q. Address? [65] A. 276 Mountain View Drive.

Q. Are you employed, Mr. Head? A. I am a student at the University of Utah.

Q. Did you have any prior employment? A. Yes.

Q. Will you state that, please. A. Last year I worked for two firms as a salesman. Prior to that I worked for George Norman, Jr.

Q. Were you also related to George I. Norman, Jr.? A. Yes, I was—George and I married sisters, and I was married to Frances Norman's sister for ten years.

* * *

Q. (By Mr. Andolina) Did you have daily contact with Mr. [66] Norman? A. Yes.

Q. Were you aware of the various luxury automobiles that he owned? A. Yes.

Q. Did you have any duties with respect to those automobiles A. Not specific, no. At various times, yes.

Q. Did you, for instance, ever make sure the cars got washed? A. Yes, when requested to.

Q. Did you drive those cars? A. On those occasions.

Q. Were you allowed to liberally drive the cars? A. No.

Q. Was anyone, to the best of your knowledge, allowed to? A. No.

Q. Do you know how the cars were acquired? A. I know—well—

MR. LEEDY: That can be "yes" or "no," your Honor, I think.

THE COURT: You can answer that "yes" or "no." Do you know how they were acquired?

THE WITNESS: Some of them.

Q. (By Mr. Andolina) Would you tell, as to the cars you know, how they were acquired. Would you state how they were acquired.

[67] MR. LEEDY: Objection. No Foundation, your Honor.

THE COURT: Do you know how they were acquired?

THE WITNESS: I know how two of them were acquired.

Q. (By Mr. Andolina) Would you please state how the cars, to your knowledge—how they were acquired. A. I think the Brougham Stutz was acquired by Mr. Norman himself and also the—

MR. LEEDY: I object. There is no foundation so far to show how he knows.

THE COURT: We have to start somewhere. Now go ahead and finish your answer. A. (Continuing)—and the Phantom V Limousine, Rolls Royce limousine, was acquired at George's instructions through Richard Ringwood.

Q. (By Mr. Andolina) Do you know who originally had title to these cars? A. Originally had title?

Q. Yes. A. Well, the Brougham Stutz originally, I believe, was in Mr. Norman's name and subsequently transferred to G. M. Leasing. The Phantom V—I am not sure how the registration was handled on it.

Q. To the best of your knowledge, were the luxury cars owned by Mr. Norman ever leased or used for any business purposes? A. I would say that they were not—to my knowledge none of [68] them were ever leased. As far as business purposes were concerned, they were part of George's business. I mean, in other words, they were

part of his advertising campaign, or whatever you want to call it, so people knew who he was and associated him with the cars.

Q. You are talking now about George Norman individually? A. Yes.

Q. Not G. M. Leasing? A. Yes.

* * *

[69] KATHARINE HEAD

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. State your name, please. [70] A. Katharine Head.

Q. And your address? A. 276 Mountain View Drive.

* * *

Q. When did you first meet George Norman? A. About four years ago.

Q. Under what circumstances? A. I was introduced to George by a business associate of his who wanted me to type some curriculum, and at that point Mr. Norman indicated that he needed a part-time secretary and asked me if I would work for him and I told him yes.

Q. What duties did you perform for Mr. Norman? A. Just various secretarial duties.

Q. Did these duties include working for any of the associated corporations? A. Yes.

[71] Q. Do you know the names of those corporations? A. Commercial Properties, I did work for G. M. Leasing, and there was one other one, but I can't remember the name.

Q. You are familiar, then, with the plaintiff corporation, G. M. Leasing? A. Yes.

Q. Were you an incorporator and director of the corporation? A. Yes.

Q. Under what circumstances did you become an incorporator? A. George asked me if I would be an incorporator, and I told him yes.

Q. Did he explain to you the duties and responsibilities of such a position? A. No, he did not.

Q. Did he tell you what business it would be in? A. No.

Q. Did you receive any compensation for your duties as a director and incorporator? A. No. Just what George paid me as a secretary.

Q. Did you ever attend a meeting of the board of directors of G. M. Leasing Corporation? A. No.

Q. Do you khow if any board of directors meetings were held? A. I don't know.

[72] Q. Were you issued any stock of G. M. Leasing? A. No.

Q. Do you know if any stock was issued? A. I don't know.

Q. Did you participate in running the affairs of G. M. Leasing? A. No, only to the degree that I would write a check if he asked me to.

Q. Upon whose initiative did you write the check? A. Mr. Norman's.

Q. Did anyone other than Mr. Norman participate in running the business of G. M. Leasing? A. Not that I am aware of.

Q. Did G. M. Leasing Corporation have any employees? A. No.

Q. Do you know if any cars were leased by G. M. Leasing Corporation? A. Not to my knowledge.

Q. As Mr. Norman's secretary you had access to the files of related corporations and G. M. Leasing? A. Yes.

Q. Were you familiar with the files of G. M. Leasing? A. At the time I worked for him I was.

Q. Could you explain specifically what those files contained. A. The files contained bank records of the bank accounts. [73] They contained some purchase agreements of the cars and the articles of incorporation.

Q. Was there any evidence in the files of any business transacted by G. M. Leading? A. Not in the files I had, no.

* * *

[74] WALLACE EDDIE LARRABEE

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. And your home address? A. 3665 East Little Willow Drive.

Q. Your business? A. I run an American Oil Service Station.

Q. What is your business address? A. 2322 East 4500 South.

Q. How long have you maintained a service station at that address? [75] A. About five and a half years.

Q. Do you know George I. Norman, Jr.? A. Yes, sir.

Q. When did you meet him? A. Oh, probably about four years ago.

Q. Under what circumstances? A. I had become familiar—knowing who he was by sight, and one day I seen him down town in a restaurant, and I went over and introduced myself and asked for his business.

Q. Were you in fact awarded his business? A. In time, not immediately, but within the next ninety days maybe.

Q. What did Mr. Norman's business entail? A. Caring for his cars and storing a couple of them.

Q. Which cars specifically, Mr. Larrabee? A. I took care—when I first started I took care of a limousine which

he had, a 1968 Cadillac Limousine, and I think he also had a couple of El Dorados at the time that I took care of.

Q. Did you take care of any of the luxury cars, the Stutz and Rolls Royce? A. As he acquired them.

Q. Also did you take care of the family cars? A. Yes.

Q. So, as far as you knew, all the cars that he had you [76] would service? A. Yes.

Q. You mentioned you stored the cars. Why did you do that? A. Well, he didn't have any place to keep them at the time. He was building his home and he didn't have garages to keep them in.

Q. Do you know who was the owner of those cars, titled owners? A. No, I am not sure. Making out inspection certificates, and so on, I would see at first "Commercial Properties" on most of them. Eventually some of them did become "G. M. Leasing."

Q. To the best of your knowledge were any titles in George I. Norman himself? A. Not to my knowledge.

Q. Was one of the cars you serviced a 1929 Jaguar KKE? A. No.

Q. I'm sorry, not 1929, a modern Jaguar XKE? A. I don't believe I did any service work on it. They purchased gas for it, and so on. I don't believe I ever serviced it.

Q. You are familiar with the car? A. Yes.

Q. I see. Is your service station located near the Norman residence? [77] A. Within two or three blocks.

Q. Were you able to observe the Jaguar at the Norman residence? A. Oh, yes.

Q. What type of use was the Jaguar utilized for? A. I believe that was Mrs. Norman's car.

Q. Was there a chauffeur for that car? A. No, not to my knowledge at any rate.

Q. Were you ever allowed to drive any of the luxury cars? A. Yes.

Q. Do you know if anyone else was? A. Oh, yes.

Q. What was Mr. Norman's attitude toward allowing other people to drive his cars?

MR. LEEDY: Objection, your Honor, calling for a conclusion.

THE COURT: An attitude is a conclusion. Sustained.

Q. (By Mr. Andolina) Who paid your bills, Mr. Larrabee? A. I received checks from Mr. Norman through the mail, possibly through Mr. Head, sometimes Mr. Norman's son would deliver them.

Q. Did you receive checks or payment in cash? A. Checks.

Q. Do you know who the checks were drawn on? [78] A. Commercial Properties for quite some time, and I received a couple of checks from G. M. Leasing.

MR. ANDOLINA: I have no further questions.

CROSS-EXAMINATION

BY MR. LEEDY:

Q. Mr. Larrabee, you described in your testimony, I think, three types of cars: the limousines, the family cars, and the luxury cars, is that correct? Isn't that what you testified to? A. Yes.

Q. The family cars which you described were the ones used by the family, isn't that correct? A. Yes.

Q. And they do not include what you term the luxury cars, is that correct? A. No.

* * *

[79] SHIRLEY P. JONES, JR.

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. Will you state your name, please. A. My name is Shirley P. Jones, Jr.

Q. And your address, Mr. Jones? A. 2766 St. Mary's Way, Salt Lake City, Utah.

Q. Your occupation, sir? A. I am an attorney licensed to practice in the state of Utah.

Q. How long have you been an attorney in the state of Utah? A. About twenty-five years.

Q. Are you familiar with the corporation known as G. M. Leasing Corporation? A. Yes. I prepared the articles and did the legal work in connection with the formation of that company.

Q. We recognize you are an attorney, so we will attempt to avoid any conflict problems there. You also served in another capacity for G. M. Leasing, is that correct? A. I was an incorporator and was one of the three members of [80] the initial board.

Q. As a member of the board did you ever attend a meeting of the board of directors? A. There were never any meetings held.

Q. Were you ever issued any stock? A. There was never any stock issued in the company.

Q. What were the assets of the corporation during the time that you were the secretary-treasurer? A. The corporation was formed in April of 1972, and the only assets that I am ever aware of were four or five of these luxury or vintage model automobiles. And to the best of my recollection those automobiles didn't come into the company until at or near the end of 1972.

Q. Did G. M. Leasing ever transact any business? A. None that I knew of.

Q. Were you ever compensated for your services as secretary-treasurer or as a director of G. M. Leasing? A. No.

Q. What were your duties as secretary-treasurer of the corporation? A. I never was secretary-treasurer of the corporation. On one occasion I acted as vice president and secretary in connection with a loan that was made to the company on the automobiles as security in December of 1972.

Q. I understand. What were your general duties then with [81] respect to the corporation? A. I had no duties with respect to the corporation other than to form it and to give advice with reference to what should be done with it. I was not the company's attorney either. To my knowledge, the company never had any attorney as such. It never transacted any business.

Q. Mr. Jones, I am handing you a copy of a status report filed with the Utah Division, Department of Employment Security, showing that there were no wages paid by G. M. Leasing Corporation. Would you identify that as a copy of your signature. A. Yes, sir, it is.

MR. ANDOLINA: Your Honor, at this time I would like to offer in evidence Defendants' Exhibit No. 2, which is a status report filed by Mr. Jones for the Utah Department of Employment Security.

THE WITNESS: Let me look at that again.

MR. LEEDY: I have no objection, your Honor.

Q. (By Mr. Andolina) Did you prepare this report, Mr. Jones? A. I signed it. I don't think the writing above is—

THE COURT: Counsel hasn't any objection to it. Why don't you offer it.

MR. ANDOLINA: At this point I offer it in evidence, your Honor.

THE COURT: Received.

[82] (The document marked Defendants' Exhibit No. D-2 for identification was received in evidence.)

MR. ANDOLINA: Thank you. At the same time, your Honor, I would like to have marked for identification as D-3 a certified copy of the State of Utah Sales and Use Tax Return, showing no sales or use taxes were paid by G. M. Leasing Corporation. Mr. Jones did not execute that particular document.

MR. LEEDY: No objection, your Honor.

THE COURT: Received.

(The document marked Defendants' Exhibit No. D-3 for identification was received in evidence.)

Q. (By Mr. Andolina) Mr. Jones, I would like to read you paragraph 9 of Plaintiff's second amended complaint, and I want you to tell me if this is a true statement.

"One of the individual defendants, the name not being known to plaintiff, contacted one Shirley P. Jones, attorney at law, who was an officer and director of plaintiff G. M. Leasing Corp., and also was an attorney for George I. Norman, Jr., and requested permission, or advised that they were about to enter the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, and said Shirley P. Jones advised that permission would not be given and that they had no authority in law to enter such premises and further [83] that, if such were done, it would be wholly contrary to law."

Is that a correct statement? A. No, that is not.

Q. Were you contacted by a representative of the Internal Revenue Service prior to the seizure of the cottage? A. No.

Q. When did you first learn of the fact that there was a seizure? A. Well, on that Friday afternoon, which I believe was March 23, I received a call in my office, and I was not there, from someone in the Norman family. It could have been Mrs. Norman. It could have been young George. And upon calling in to my office I was informed there was some trouble out at the house and at the cottage, that there were a lot of Internal Revenue agents there and that there was a problem.

So I went to the house, and there wasn't anyone at the house, so I went over to what was called the cottage, which was the business office of--which was the business office and was also used as a home and as a partial residence. And at that time inside the building and in the office there were several revenue agents, and they were in the process of inventorying and collecting and boxing. So I was particularly concerned about various files and records which [84] were contained there in the office, and I entered and asked what they were doing, and I was informed and shown a seizure notice.

Q. Do you know whom you talked to at this point? A. I am not sure. I think Mr. Clayton was there. I think several of the defendants were there. but I didn't know any of them, and I am not sure about what I said to which agent, but I did observe that files were being taken out of the filing cases and put in boxes and sealed.

Q. Was any employee of the Internal Revenue Service investigating, looking into the file, prior to carrying it out and putting it into the boxes? A. Not that I observed. And I asked them what they were doing, and they said they were seizing them. I said, "Well, you fellows haven't any right to seize business records. You are way out of line on that."

They said, "Well, this is a particular problem."

And I said, "Well, you bet it is."

And they said, "Well, we want you to talk to our attorney, because that is who we are acting under."

I said, "Well, get him on the phone for me."

And I believe they got Mr. Brennan, in the Regional Counsel's office, or someone in his office. I think it was Mr. Brennan. And I asked him, you know, what they were up to. And I was particularly concerned about [85] seizure of records. It appeared, and I knew, that there were seizure levies and a jeopardy assessment had been made the first part of the week. And I had been down to the Bureau and I had seen the seizure and the notices. And my concern was with those records.

Mr. Brennan told me, he said, "They are in the process of all kinds of automobiles, unloading property from the house; they almost ran over one of our agents with one of their automobiles. And we believe there may be money or there may be a lot of stock certificates in those files." And he said, "That is all we are after. We don't care anything about the files, but we want either the money or stock certificates."

I said, "Well, I still think that you are out of line."

And he said, "Well, will you come down tomorrow morning and go through all the files with us and inventory them."

And I believe I said, "Well, I don't know." Because at that point I had no authority to act as attorney for G. M. Leasing Corporation. Mr. Norman was a fugitive. I had had a telephone call from Mr. Norman in which I told him I would not represent him unless he surrendered himself.

* * *

[86] Q. That afternoon did any Internal Revenue agent, officer, or employee harass you in any way? A. No. They were very courteous. They said they were acting [87] under the advice of their attorney. And I asked them to get the attorney on the phone. There was some little fuss around there, and they all stopped and waited, and I had this conversation with him.

* * *

[88] Q. Did you ever advise any agent or employee that it was your opinion that these corporations were merely shells and alter egos of George I. Norman?

MR. LEEDY: I object, your Honor. That is the ultimate conclusion in this lawsuit.

MR. ANDOLINA: We are not asking for the testimony as his conclusion of it, but whether he told an officer so they had a basis for trying to find assets in the corporate names.

THE COURT: I think you can inquire about what Mr. Jones told them. Overruled. A. I wish you could be particular as to which corporation, because I didn't handle all of the affairs of Mr. Norman.

Q. (By Mr. Andolina) G. M. Leasing, specifically. A. G. M. Leasing—if I didn't say it expressly, I said it in effect, because I think that was the situation. It had no assets or property of its own.

* * *

[93] Q. Mr. Jones, did you pay on behalf of George Norman approximately 290 thousand dollars for his taxes in the year 1970? A. He made a deposit into my account, and I wrote a check on my account to pay those taxes in on the last day when they could be paid in to avoid a penalty.

Q. Those moneys were in fact paid to the Internal Revenue Service? A. Oh, yes, they were.

MR. LEEDY: Thank you. Nothing further.

[94] REDIRECT EXAMINATION

BY MR. ANDOLINA:

Q. Mr. Jones, with respect to the check for 289 thousand dollars, you attached it to a return? A. No. It was a request for an extension. Herb Zimmerman prepared—it may have been a tentative return or just an estimated payment or declaration. I don't think it was a full return, because I had worked all afternoon in the office with Mr. Zimmerman; he had called me up there, and we had to get this payment in by four o'clock that day, and that is the reason it was handled in that way.

Q. Mr. Jones, I am handing you Defendants' Exhibit D-4, which is a 1040 U.S. individual income tax return in the name of George I. Norman and Frances M. Norman by Shirley P. Jones. Is that your signature? A. Yes.

Q. Would you look at the other documents and identify that they were sent by you with the returns. A. Yes. This is what Mr. Zimmerman prepared. I recall now—I hadn't thought it was a full return, and it is not. It is just an estimated tax.

MR. ANDOLINA: Your Honor, I would offer into evidence Defendants' Exhibit D-4.

MR. LEEDY: No objection, your Honor.

THE COURT: Received.

* * *

[96] FLOYD LaMAR MOODY

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. State your name, please. A. Floyd LaMar Moody.

Q. Your address? A. 2579 Wilmington Avenue.

Q. What is your occupation? A. Car salesman.

Q. By whom are you employed? A. I work for Schettler-Williams. They are at 702 South Main.

Q. What type of cars do they sell? A. They sell the Jaguar, the Triumph, Datsun, and Volvo.

Q. Did you ever meet George I. Norman, Jr.? A. Junior?

Q. Yes. A. Yes.

Q. Under what circumstances? A. He come in and purchased a 19–I believe it was a 1973 "Jag" from us.

Q. Did he discuss with you the particularities about the car? [97] A. We did talk about the car. The only thing we went over was how the car functioned, the riding and the handling and this type of thing.

Q. How did he pay for the car? A. He wrote a check for the car.

Q. Who was the check drawn on? A. G. M. Leasing.

Q. Did Mr. Norman state to you for what purpose the car was needed? A. My understanding the car was for his wife's own personal use.

* * *

LaVOR RULON WOOD

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

[98] Q. State your name, please. A. LaVor Rulon Wood.

Q. Your Address? A. 38 East 1300 South, Salt Lake City, Utah.

Q. Your occupation? A. Self-employed.

Q. Are you familiar with the corporation known as G. M. Leasing? A. Yes, I am.

Q. What was your capacity in such corporation? A. I was acting president.

Q. Were you also an incorporator? A. Yes.

Q. A member of the board of directors? A. Yes.

Q. Who initiated the formation of the corporation? A. Mr. Norman.

Q. Do you know for what purposes? A. Yes. For leasing automobiles.

Q. Do you know if that purpose was ever carried out? A. Fulfillment, no; attempt, yes.

Q. Who controlled the affairs of G. M. Leasing? A. Mr. Norman and myself discussed the affairs of the corporation daily.

Q. Did you ever attend a meeting of the board of directors? [99] A. There was no official meeting of the board of directors. However, we met every day.

Q. Who is "we"? A. Mr. Norman and myself.

Q. Was any stock issued? A. Not to my knowledge.

Q. What comprised the assets of G. M. Leasing Corporation? A. What comprised the assets of G. M. Leasing Corporation?

Q. Yes. A. To the best of my recollection, a Stutz Brougham sedan, three Stutz two-doors, one Rolls Royce '65 Sedan, one '29 Rolls Royce Phaeton, one Jaguar sedan. I can't recall if the Cadillac limousine were included or not. I don't think so.

Q. Who furnished the money to purchase these cars? A. At what time, sir.

Q. At the initial stage of the corporation and when–as each car was purchased. A. Well, there were cars purchased prior to the organization of G. M. Leasing.

Q. Do you know who purchased the cars prior to G. M. Leasing? A. The cash payments were arranged by Mr. Norman?

Q. How about the cars subsequent to the formation? A. I really can't recall the exact checks. I have tried to recall, but I cannot recall.

[100] Q. Where were the offices of G. M. Leasing? A. We operated out of what was commonly called the cottage.

Q. Did you convey this information to any Internal Revenue agent or officer during the week of March 23? A. I don't recall talking to an Internal Revenue agent. I really don't recall. If I did, I don't recall talking to one.

Q. Did you receive any compensation for your services? A. No, but I was to receive compensation for my services, but I never received payment.

* * *

[103] BY MR. LEEDY:

Q. From your testimony, Mr. Wood, it would be your opinion that this company was formed for the legitimate purpose of [104] leasing cars, is that correct? A. Yes, sir. It was our intention.

Q. Why did the leasing of the automobiles that were owned by G. M. Leasing never occur? A. We never were able to have the automobiles completely ready for leasing. I must have spent almost nine months in preparing the automobiles, and it seemed like with this particular type of car, particularly the Stutz, they were never ready, and we had considerable problems with the dealer that we purchased the cars from. For example, the Brougham sedan--shortly after purchase the engine blew, and they agreed to let us rebuild and put a substantial and proper engine in the automobile. And in the process of that, along with them breaking a glass twice in the automobile that had to be specially prepared and built by hand, we really never had the sedan ready. In fact, at the time they sold the car the one window was still missing in the automobile.

The Stutz two-door Burgundy, we had considerable problems with the paint. They agreed to repaint the

automobile, and it took several months to get the proper paint from Italy to repaint the automobile, and then it had to be hand finished.

The gold two-door, there were numerous small problems. I drove the automobiles between Salt Lake and [105] Ogden, bringing them back and forth, and also used transports to bring them back and forth to get the cars in condition to do anything with.

Q. The reason that no actual leases had been entered into yet is that none of the automobiles were finalized and ready for leasing, is that correct? A. I can only answer that the cars were never ready to be leased, or whatever.

Q. It was your intention and Mr. Norman's intention to lease those automobiles upon their becoming ready? A. That is correct.

Q. In connection with those intentions you testified, did you not, that you obtained lease forms from Jules Meyers? A. Yes. I obtained lease forms and was in the process of preparing our own lease.

Q. And in addition to those jobs you performed other activities in attempting to obtain other cars for G. M. Leasing to lease, is that correct? A. Luxury cars, that's correct.

Q. And also you contacted other people about leasing cars from G. M. Leasing, isn't that correct? A. That I did.

Q. Also did you not inquire about obtaining a Stutz dealership for the state of Utah for G. M. Leasing? A. Yes. In fact, we inquired about having more than one [106] state for the Stutz motor cars. We talked of building a showroom adjacent to the office, right in front of the cottage.

Q. You indicated that, as an officer and director, you talked on a daily basis with George Norman, although

they weren't designated as directors meetings, isn't that correct? A. We met daily or, while I was in California, I would contact him by phone no later than every other day.

Q. And also isn't it true that the director and officer, or acting officer, Shirley Jones was present on many of those occasions? A. Mr. Jones was present on many of these meetings.

Q. And was it not your expectation that upon the leasing of these automobiles you would receive an income from G. M. Leasing Corporation? A. I was told that, if everything worked out fine, an income would be derived from G. M. Leasing Corporation.

Q. And isn't that the reason you spent some eight or nine months in attempting to prepare the cars for leasing? A. I spent my own time and money preparing it, yes.

Q. After the disappearance of George Norman you, on behalf of G. M. Leasing, arranged for the sale of a Rolls Royce automobile, is that correct? A. I did.

[107] Q. What was the sales price of that? A. If I recall, 30 thousand dollars.

Q. And there were no commissions paid? A. No commissions paid.

Q. In the initiation of G. M. Leasing do you recall opening a bank account for G. M. Leasing? A. Yes. I believe we opened it over at Zions.

Q. And you were one of the signators on that bank account, were you not? A. Yes.

* * *

[108] JAMES M. LIVSEY

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. State your name, please. A. James M. Livsey.

Q. Your address, Mr. Livsey. A. 3657 South 2400 East, Salt Lake City.

Q. By whom are you employed? A. The Internal Revenue Service.

Q. How long have you been employed by the Internal Revenue Service? A. Thirty-three years.

Q. In what capacity do you presently serve? A. Revenue Officer.

Q. And how long have you been a revenue officer? A. Since 1942.

Q. What are the duties of a revenue officer? A. Collection of delinquent accounts. That is basically, primarily, the job.

Q. Were you assigned collection of the account of George I. Norman, Jr.? A. Yes.

Q. When were you first made aware of the fact that you would [109] be assigned that account? A. On Monday, March 19, 1973, I was returning to the office about four o'clock, and Mr. Jensen, chief of the collection division, met me in the hall and asked me to be available tomorrow morning, that he would like Revenue Officer Clesse Hilton and myself to handle a jeopardy assessment.

Q. I see. Did you take any other action that night? A. No.

Q. What was the next action you took? A. The next morning, on March 20, Bert Applegate, the group

supervisor, and myself and John Haacke went to Joell Jensen' office, the chief of the collection division, and at that office we were given the jeopardy assessments and instructed to go out to the residence of George I. Norman and Frances Norman to collect the tax.

Q. Did you in fact go out to the Norman residence? A. Yes. John Haacke and myself, Clark Holfeltz and Ron Harrington, special agent went out to the residence of George I. Norman and Mrs. Norman.

* * *

[110] Q. (By Mr. Andolina) Did you read the forms to Mrs. Norman? A. Yes. I knocked on the door, and Mrs. Norman came to the door. And I had a form 3552, which is what we call an assembly for assessment, and on the form it gives the taxpayer's name and the type of tax, the period, and the amount due, and I read the form to Mrs. Norman on the tax due on Mrs. Norman and then I read the form to Mrs. Norman [111] on the tax due on Mr. Norman.

Q. Did you make a demand on Mrs. Norman for payment of the tax? A. Yes, for payment of the taxes.

Q. Did she pay the taxes? A. No.

Q. What did she advise you? A. She stated to contact her attorney, Shirley Jones.

Q. What action did you take? A. We left the premises and went down to 39th South and Highland Drive, and I made a call to Joell Jensen, chief of the collections division, and he stated that—

MR. LEEDY: Objection. This calls for a conversation which is hearsay, your Honor.

THE COURT: Yes.

MR. ANDOLINA: He may testify he called.

THE COURT: He has already done that. That is about all he can say.

Q. (By Mr. Andolina) After you made the phone call to Mr. Jensen, what action did you take? A. Then we went to the State Capitol and checked the motor vehicle files to see what cars were in the name of George Norman, Jr.

* * *

[112] Q. Do you know if notices of federal tax liens were in fact filed? A. Yes.

* * *

Q. Mr. Livsey, I am handing you Defendants' Exhibits 5 through 9, notices of federal tax liens. Is that your signature? A. Yes.

MR. ANDOLINA: At this point I would offer into evidence Government's Exhibits 5 through 9, notices of federal tax liens.

MR. LEEDY: Your Honor, we would object to those with the exception of 8 and 9. I think 5, 6, and 7 deal [113] with different corporations and different people; 8 and 9 deal with Frances Norman and George Norman.

MR. ANDOLINA: Your Honor, the purpose again—8 and 9 do have Frances and George Norman; 5, 6, and 7 have Real Estate, Inc., as alter ego, nominee, agent, or transferee. This is all part of the same collection, and we would like to show that these corporations were alter egos and all the taxes arose from Mr. Norman's liability.

MR. LEEDY: If it please the Court, I hope we are not going to start trying three other corporations in this lawsuit, and their determination of whether they were alter egos is irrelevant.

MR. ANDOLINA: Your Honor, we are not attempting to show that these other corporations were alter ego or responsible for anybody else's taxation.

THE COURT: Well, we are trying one case here. I don't think we ought to drag in three others. The objection is sustained.

MR. ANDOLINA: I understand 8 and 9 are allowed.

THE COURT: Eight and nine are admitted.

(The documents marked Defendants' Exhibits D-8 and D-9 for identification were received in evidence.)

MR. ANDOLINA: Thank you, sir.

Q. (By Mr. Andolina) What was the next action you took on the collection of the George I. Norman, Jr., account, Mr. [114] Livsey? A. As I recall, the next action was to place levies with the Zions First National Bank.

* * *

[115] Q. Why was the Jaguar not seized immediately? A. At the time of the first seizure the office decided to let Mrs. Norman and her family have cars for transportation, and they left with them three cars.

* * *

[116] Q. When you took the Jaguar—when you seized the Jaguar, were there any other cars available for the family use? A. Well, I understood that—

MR. LEEDY: I object to what he understood.

THE COURT: Sustained.

Q. (By Mr. Andolina) To the best of your knowledge were there any other cars— .

[117] THE COURT: Well, to your knowledge. Do you know? Do you have any knowledge on it?

Q. (By Mr. Andolina) Do you know if there were any other cars available? A. Yes, a station wagon and a Chevrolet car.

Q. How many drivers were in the family? A. As far as I know, two.

Q. Two drivers, and you left two cars there? A. Yes.

* * *

[119] KEITH FINLEY

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. State your name, please. A. Keith Finley.

Q. Your address? A. 8382 Fayeway Drive.

Q. By whom are you employed, Mr. Finley? A. Internal Revenue Service.

[120] Q. How long? A. Six and a half years.

Q. In what capacity do you presently serve? A. I am a revenue officer.

Q. How long have you been a revenue officer? A. Six and a half years.

Q. Were you one of the revenue officers assigned the account of George I. Norman, Jr.? A. No, I wasn't really assigned the account. I assisted on it.

Q. Pursuant to such assistance did you participate in the seizure of the property while in the zeizure of the premises located at what is commonly referred to as the cottage? A. Yes, I did.

Q. What date was that? A. That would have been March 22.

Q. Did you execute a notice of levy pursuant to that seizure. A. Yes, I did.

Q. Mr. Finley, I am showing you a notice of levy which has been marked as Defendants' Exhibit D-10. Will you verify that as your signature. A. Yes, that is my signature.

MR. ANDOLINA: Your Honor, at this time I would offer into evidence the notice of levy dated March 22, 1973, signed by Keith Finley.

[121] MR. LEEDY: No objection, your Honor.

THE COURT: Received.

(The document marked Defendants' Exhibit D-10 for identification was received in evidence.)

Q. (By Mr. Andolina) Did you take this notice of levy with you? A. Yes, I did.

Q. Did you show it to anybody upon reaching the premises? A. When I reached the premises, there was nobody there, so at that point I didn't show it to anybody.

Q. Did you subsequently show it or read it to anybody? A. Later on in the day—to the best of my knowledge it was the same day—Shirley Jones came down to the premise and I showed it to him.

Q. What was your purpose in going to the premises of the cottage? A. To seize assets.

Q. What particular type of assets? A. Any assets at all that could have belonged to George Norman.

Q. Who makes a determination, when you go on a seizure, what constitutes an asset? A. Well, anything of value.

Q. Did you take the books and records that were at the premises? A. Yes, sir.

[122] Q. For what reason did you do that? A. Well, we didn't know what all was among them, if there was—what was of value that could have been mixed in with them, and we didn't have any idea, so we had them sealed in boxes.

Q. Were you given specific instructions to do this? A. Yes, I was.

* * *

[129] JOHN C. GREEN

called as a witness on behalf of the defendants, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. State your name, please. A. John C. Green.

Q. Your address, Mr. Green? A. 2822 South 2750 East, Salt Lake City.

Q. Are you employed, Mr. Green? A. Yes.

Q. By whom? A. The Internal Revenue Service.

[130] Q. In what capacity do you serve? A. I am special procedures officers for the Salt Lake District Office.

Q. What is the function of the special procedures officer? A. My job is to act as liaison between District Office and the Office of the Regional Counsel, the U. S. Attorney, the Department of Justice, the courts.

* * *

Q. Did you recommend that jeopardy assessment be made against George I. Norman, Jr.? A. Yes, I did.

* * *

[131] Q. (By Mr. Andolina) Once the assessment was made against Mr. Norman what action did you take, Mr. Green? [132] A. Once the accounts had been assigned to a revenue officer I advised that revenue officer and the group supervisor as to specific wording on the federal tax liens to be filed and any other pertinent information or help that I could give them.

Q. Did you investigate the assets of George I. Norman, Jr.? A. Not directly.

Q. Were you aware of any assets in the name of George I. Norman, Jr.? A. I was not.

Q. When did you first become aware that the cottage was a place of business and not a residence? A. On March

21 a Mr. Haacke and a Mr. White called my office stating that they had information relative to the fact that there was a business at the address in Holladay and asked my opinion as to whether, under the federal tax liens and the levy authority that they had, should they go ahead and make that seizure of that property.

Q. And you authorized the seizure?

MR. LEEDY: Objection, your Honor. That calls for not only a conclusion of law, but is complete hearsay.

MR. ANDOLINA: Responding to the question?

MR. LEEDY: Yes. What was his advice?

MR. ANDOLINA: What his advice was, your Honor, is not necessarily the right advice. I am just asking to [133] show the steps–

THE COURT: Sustained. Start in a different way.

Q. (By Mr. Andolina) Upon receipt of this information what action did you take? A. I advised the group manager–

MR. LEEDY: I object, your Honor. Again we are getting into hearsay. There is no foundation.

THE COURT: Sustained.

Q. (By Mr. Andolina) Were you aware of the seizure that took place at the business known as the cottage? A. I was aware of that procedure.

Q. Did you know that a second seizure was made? A. Yes, I was aware of that.

Q. Do you know why the second seizure was made? A. Initially it was questionable whether or not that was a business or a personal residence, and the Internal Revenue Service withdrew until a more affirmative determination could be made relative to whether or not it was in fact a business. When it was determined through subsequent investigation that it was a business–

MR. LEEDY: I object to what was determined unless there is a foundation.

MR. ANDOLINA: That is sufficient. Thank you.

Q. (By Mr. Andolina) Mr. Green, in your capacity as special procedures officer you are also familiar with the assessment [134] procedure, is that correct? A. Yes.

Q. I am showing you a copy of a United States individual income tax return for 1970, which has previously been marked as Defendants' Exhibit D-4 and which has been admitted in evidence. Referring to that will you explain to the court why the 289-thousand-dollar check that accompanied it was not reflected on Mr. Clayton's jeopardy assessment. A. This was not–this would not have been accepted by the Service Center as a valid return. The money was reflected, or placed, in a suspense account up at the Service Center, which is reflected on records in the District Office, which I had access to and reviewed and therefore there was–at the time Mr. Clayton made the assessment there would have been no basis upon which he could make application of these funds to those accounts that he was setting up a deficiency on.

* * *

[136] Q. (By Mr. Andolina) Mr. Green, are you familiar with the form known as 4340? A. Yes, I am.

[137] Q. I hand you a copy of a certificate of assessments and payments, which has been marked for identification as Defendants' Exhibit D-11. Would you identify that document, please. A. That is a form 4340, Certificate of Assessments and Payments, on the account of George I. and Frances M. Norman.

MR. ANDOLINA: At this time I would like to offer in evidence Defendants' Exhibit D-11.

THE COURT: Don't hand anything up here. Get around on the other side of the bench.

MR. LEEDY: Your Honor, the plaintiff would object to the introduction of Exhibit D-11 on the grounds there

appear to be certain assessments in there—if it is being introduced for the purpose of showing in any way what tax is owed, we would object, because there is no foundation.

MR. ANDOLINA: Your Honor, the legal sufficiency of this document is only to the fact that the assessment was made, that the officer certifies that according to their records an assessment was made on a certain date in the amount that it was made. This is the certification. The legal sufficiency of this, of course, can be rebutted. This is not conclusive evidence that it is correct.

MR. LEEDY: If it please the Court, I believe it is already in evidence that an assessment was made which failed to reflect the 290-thousand-dollar payment, business [138] deductions, and various other things.

THE COURT: What document is that?

MR. LEEDY: There was no document, but there was testimony.

MR. ANDOLINA: I don't think that testimony has ever been substantiated. We have asked for substantiation.

THE COURT: Whose testimony was it?

MR. LEEDY: Phil Clayton, a defendant.

THE COURT: That is your witness.

MR. ANDOLINA: Yes.

THE COURT: What do you mean?

MR. ANDOLINA: Your Honor, we have asked for substantiation from the accountant of the plaintiff taxpayer. What we are saying is that Mr. Clayton made an assessment on the information he had before him. If you come in and show where we are wrong and give us substantiation, then we will agree that we are wrong. With what we have now we have no choice.

THE COURT: Are you offering a document that is going to entitle the plaintiff to the relief he asks? Is that what you are saying?

MR. ANDOLINA: No, it isn't what I am saying at all, your Honor. I am saying that this document shows that on a certain date, as alleged in the Government's counterclaim, an assessment was made for the amount that we have [139] alleged.

Now, as I understand the law, this document provides our basis for recovery. Then the plaintiff in this case, taxpayer, must come back and show that it is arbitrary by a preponderance of the evidence. That is the sole effect of this document, your Honor.

THE COURT: Mr. Leedy.

MR. LEEDY: No. 1, if it is not offered to prove the amount of tax owing, the objection is somewhat diminished otherwise it is cumulative, because that evidence is already in. It shows prior years and history which are not relevant at all. But we will stipulate that Mr. Clayton prepared an assessment that came out and didn't reflect the payments that had been made, it didn't reflect the basis in the stock, and gave Mr. Norman a thousand dollars business deduction, or the standard deduction, rather than the extreme amount of business expenses which Mr. Clayton admitted he had incurred.

THE COURT: Is that satisfactory to you?

MR. ANDOLINA: Yes, your Honor, it is.

THE COUURT: All right. That stipulation is received, and the document is refused.

* * *

[140] PHILIP JAMES CLAYTON

called as a witness on behalf of the defendants, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION

BY MR. ANDOLINA:

Q. Mr. Clayton, you have previously stated you are a revenue agent, is that correct? [141] A. Yes.

Q. When were you first assigned the account of George I. Norman, Jr.? A. October 17, 1972.

Q. In what manner were you assigned? A. Through our regular channels of control over returns I received a 1247 card that I had control over the return—that a return had not in fact been filed.

Q. What action did you take? A. I took no action at that time.

Q. What was the first action you did take? A. When I found out that Mr. Norman was a fugitive and that no returns had been filed for '70 and '71, I proceeded to investigate the possibility of any income that he might have had.

Q. Where did you get your sources? A. My source of income came from various third-party sources in regard to stock sales.

Q. Did you receive any information from the taxpayer or his accountant or representative? A. No, I did not.

Q. What was the result of your investigation?

MR. LEEDY: I object, your Honor. There is no proper foundation. He indicated he contacted third parties. They are not present in court. I have no idea what they [142] said, to whom, or how they are valid.

MR. ANDOLINA: Your Honor, at the time that Mr. Clayton received a request to investigate he had no person he could go to. Usually when you make an

investigation, you can go to a taxpayer and say, "Let me look at your books and records," go to your accountant, go to your lawyer. He had nothing. He had to do it on his own.

MR. LEEDY: They seized the books and records.

MR. ANDOLINA: We seized the books and records on March 21. I am going to bring out the assessment was made prior to that time.

Q. (By Mr. Andolina) What date, Mr. Clayton, did you make your recommendation of a jeopardy assessment? A. Monday, March 19, 1973, I believe.

THE COURT: When were the documents seized?

MR. ANDOLINA: The 21st, your Honor, and 23rd. The first one was the 21st. The second time was the 23rd.

Q. (By Mr. Andolina) Did you use any documents that were seized in preparing your recommendation for jeopardy? A. No, sir, I did not.

Q. Why did you recommend that a jeopardy assessment be made? A. Because returns had not been filed, and from the amount of stock sales I had knowledge of it was indicated there would be a substantial amount of tax possibly owing.

Q. Mr. Clayton, would you explain the nature of the sources [143] of income that you assessed against Mr. Norman, the deductions, if any, and any controversy you feel has now, subsequent to your assessment, been brought into the case. A. Yes, sir.

MR. LEEDY: I would like one question at a time. Source of income would be one.

Q. (By Mr. Andolina) May we have the source of income that you based your recommendation upon principally. A. Yes, sir. It was based strictly on stock sales which had been made through various brokerage houses.

* * *

DEPOSITION OF BERT APPLEGATE

[1] IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

G.M. LEASING CORPORATION, Plaintiff, vs. UNITED STATES OF AMERICA, DEPARTMENT OF TREASURY, INTERNAL REVENUE SERVICE, RONALD V. WISE, District Director, JAMES M. LIVSEY, JOHN W. HAACK, GLEN S. HILTON and JOHN DOES I THROUGH V, Defendants.	))))))))))	CASE NO. C-189-73 DEPOSITION OF: BERT APPLEGATE

Deposition of BERT APPLEGATE, called as a witness on behalf of the plaintiff in the above-entitled action now pending before the Court, taken at the Law Offices of Bottum and Leedy, 820 Newhouse Building, Salt Lake City, Utah, on September 19, 1973, commencing at the hour of 9:15 o'clock a.m., before L. Reid Seely, Notary Public and Certified Shorthand Reporter, pursuant to Written Notice, and pursuant to the Federal Rules of Civil Procedure.

APPEARANCES

FOR THE PLAINTIFF:	BOTTUM AND LEEDY By RICHARD J. LEEDY, ESQUIRE Salt Lake City, Utah
FOR THE DEFENDANTS:	MICHAEL B. ANDOLINA, ESQUIRE General Litigation Section Tax Division U.S. Department of Justice Washington, D.C. 20530

[2] MR. LEEDY: Would you swear the witness, please?

BERT APPLEGATE

called as a witness on behalf of the plaintiff herein, being first duly sworn, was examined and testified as follows:

MR. LEEDY: May it be stipulated that this is the time and place for taking of the deposition of – off the record.

(Discussion off the record.)

MR. LEEDY: – the Defendant Bert Applegate, in the case of G.M. Leasing Corporation versus United States of America, et al?

Are you going to say you stipulate?

MR. ADOLINA: It's stipulated.

MR. LEEDY: Okay.

DIRECT-EXAMINATION

BY MR. LEEDY:

Q. State your name, please. A. Bert Applegate.

Q. And your address? A. 2138 East 6200 South, Salt Lake City.

Q. Are you employed, Mr. Applegate? A. Yes.

[3] Q. By whom? A. Internal Revenue Service.

Q. And in what capacity? A. Group Manager is my title.

Q. And what group do you manage? A. The D-2 Revenue Officer Group in the Salt Lake City District.

Q. And what is their function? A. To secure deliquent returns, to collect delinquent taxes, and to perform miscellaneous investigations.

Q. Are you acquainted with John Green. A. Yes, I am.

Q. What is his capacity? A. He is a Special Procedures Officer.

MR. LEEDY: Off the Record.

(Discussion off the record.)

Q. (By Mr. Leedy) Are you acquainted with the tax assessment against George I. Norman, Jr. for the years 1970 and 1975? A. Yes, I am.

Q. And when did you first become acquainted with it? A. I believe March 20th was the first date that I actually saw the tax assessments.

Q. And who showed them to you? A. The Chief of Collections, Joel Jensen.

[4] Q. And who was present? A. Myself, Mr. Jensen, and Revenue Officer Jim Livsey.

Q. Tell me what was said by whom at that time. A. As I remember, Mr. Jensen – going back a little bit, he had indicated a couple of days prior to this actual meeting that we were contemplating a jeopary tax assessment. So on the 20th he actually called us over to the office and showed us the assessments, and indicated that we should

take thes, that I should assign them to a revenue officer for normal collection activity. Exactly what was said at that point, I don't know. I think we asked a few questions regarding the taxpayer, and background information, and a few odds and ends like that. But there was not a great deal really said at that meeting.

Q. Are you familiar with a determination made that the plaintiff in this action, G.M. Leasing Corporation, was the alter ego, nominee or transferee of George I. Norman, Jr.? A. Am I acquainted with what, did you say?

Q. With a determination that was made that G.M. Leasing was the alter ego, nominee or transferee of George I. Norman, Jr.? A. Yes, I Am.

Q. When was that determination made? A. I don't know exactly when it was made, but it would have been made shortly after the tax assessment. Probably [5] around the 21st, probably the day after the tax assessment was made.

Q. Who made that determination? A. The determination was made – well, let's say this: The determination was made to seize the cars – I guess this is what you are getting at – so we must have assumed that these were in fact Mr. Norman's cars, through an alter ego. But this was made probably on the date of the 21st, at a meeting about, oh, I would say 8:30, in my office.

Q. And who was present? A. As I remember, there was Phil Clayton, a revenue agent, myself, Jim Livsey, John Green, Special Procedures Officer, Tim Ellison, special agent, and I believe Kles Hilton, a revenue officer. There may have been more people present than that, I don't know.

Q. Can you tell me what was said, and by whom, that led to the determination that G.M. Leasing Corporation was the alter ego, nominee or transferee of George I. Norman, Jr.? A. It was a very lengthy meeting, and I'll

kinda have to just summarize it, not being able to remember exactly what was said. But we had discussed serving the notices of assessment to the taxpayer by Mr. Livsey, what had taken place, and we discussed the case in general.

Q. When you say you discussed what had taken place, what did you discuss? [6] A. What happened when Mr. Livsey went out there and demanded payment. Of course, after that point, it was – we knew this prior to that meeting. But, anyway, it was discussed that a lien had been filed at the County Recorder, after payment was not secured.

Q. A lien had been filed against whom and by whom? A. By Mr. Livsey, I presume. But I'm not exactly sure if it was just the first lien, which was against George and Frances Norman, or if it was the alter ego liens. But I would presume that it would be the liens against George I. Norman and Mrs. Norman.

Q. Okay. A. So we discussed the merits of the case. And we had done quite a lot of preliminary investigation at that time. We had looked at things like how were the cars registered with the State of Utah –

Q. Excuse me. If I may interrupt. When you say you discussed the merits of the case, you mean the merits of determining whether G.M. Leasing Corporation was the alter ego, nominee or transferee of George I. Norman, Jr.? A. Yes. Not only G.M. Leasing, but several other corporations.

Q. You didn't discuss the merits of the tax assessment, itself? A. No.

[7] Q. Okay. I just wanted to set that straight. Now, continue on. A. So I guess we're talking about the determination to seize the cars, or that this G.M. Leasing is an alter ego of George I. Norman.

Do you want to know the factors –

Q. Yes. A. – that we discovered or talked about in making this determination?

Q. That's exactly what I want to know. A. Okay. The first thing I guess – and going strictly from memory, just some of the things I can think of – we looked at the registration records at the State of Utah for vehicles. There were no vehicles registered in George I. Norman or his wife's name. There were vehicles registered in G.M. Leasing, and also I believe Commercial Properties.

So it seemed – on this thing alone, it seemed strange to us that a person would not have any vehicles registered in his personal name. That's just not, you know, the normal situation.

We looked at a report that I believe Tim Ellison, or an affidavit that he had secured from LaVar Wood, which indicated certain things about the corporation.

Q. Are you sure you looked at this prior to this meeting? [8] A. No.

Q. Are you sure this affidavit was secured after the determination; A. Well, I don't know when Mr. Ellison secured that.

Q. Are you positive that it was brought up at the meeting? A. I'm not positive, but it seems to me like it was. Again, this is going back six months.

We talked to the – well, let's get down to the specifics as to what we looked at.

Q. If I may interrupt you. Do you have that affidavit of LaVar Wood? A. Not with me, no.

MR. LEEDY: Would you supply that to me?

MR. ADOLINA: I will produce it for you.

A. We talked to Mr. Larrabee – I didn't talk to him, but the revenue officers had talked to Mr. Larrabee about these cars. Now, I'm not sure exactly when this took

place. Again, I'm going by memory, so what actually took place might be a little bit out of order here. But we did know that the cars were parked in Norman's residence, so this appeared to be personal use of the cars.

We looked in the phone book, there was no general G.M. Leasing in the phone book. We went over – again, I'm saying "we." I didn't actually do this, but people who were [9] at this meeting had done this. We went to the County records and the City records to check for a business license, which is normal procedure for a business to have a license to do business, such as a leasing company would have. There was no record of G.M. Leasing having a business franchise or a County franchise license.

We talked about the types of automobiles that were owned, or at least under the name of Commercial Properties and G.M. Leasing. They were high-priced automobiles, they were show cars, they were collector cars, none of the cars being of the type that would normally be used in a leasing business. This was an important part of our determination.

We talked to the special agent who was there, Phil Clayton, about the corporations. Based on his prior experience with Mr. Norman's records, what was his opinion of these corporations? Were they valid corporations, in his opinion, or were they merely alter egos or fronts, if you want to call them that, of Mr. Norman?

MR. ADOLINA: Excuse Me, Mr. Applegate. You said "Phil Clayton, special agent."

THE WITNESS: He is –

MR. ADOLINA: You mean the revenue agent?

THE WITNESS: Revenue agent, yes.

MR. ADOLINA: Let the record reflect that Phil Clayton is a revenue agent.

[10] THE WITNESS: Okay.

A. This is a general idea of what was discussed at the time. There are other factors, that I can't recall right now, which led us to believe that the cars – well, let's see. Two other things I can think of, perhaps. We did go to the Secretary of State, checked out what was on record there in not only G.M. Leasing but other corporations. We found a closest relationship between several of the corporations. If you want me to name the corporations, I could. For example, Real Estate, Inc., Intermountain Land Development, which wasn't on record there. But we found a close relationship of the officers, for example, Norman, LaVar Wood, also Attorney Jones.

This is an indication, from our background, of alter ego corporations. Just again another indication, when corporations are closely held by a small number of people, this indicates that you might have a possibility of an alter ego corporation.

Let's see. There was one other thing we checked out, too.

I can't recall any more details of actual specifics or factors that we considered, but there were others. All pointing to use, in our background and general knowledge of working cases of this type, that in all likelihood, from what evidence we had at the time, that this would be an alter ego [11] corporation, and that the cars probably would be those of Mr. Norman.

Q. (By Mr. Leedy) Based on all of these factors that were discussed, who made the determination to levy and seize upon the cars in the name of G.M. Leasing Corporation? A. I don's know that I can say any one person did. It v as discussed. We did call Regional Counsel and it was discussed with Mr. Richard Brenna. And we told him what evidence we had, what information we

had, and with his concurrence we determined that we should probably go ahead and take what enforcement action we deemed necessary to protect the Government's interests.

Q. Thereafter did the group, of which you were the group supervisor, seize the automobiles which belonged to G.M. Leasing Corporation – excuse me – which were registered in the name of G.M. Leasing Corporation? A. I don't understand your question. What –

Q. Did the IRS seize the cars which were registered in the name of G.M. Leasing? A. On the 21st, I believe four cars were seized. And I'm not sure if these were all in the name of G.M. Leasing, but I believe that they were.

Q. Subsequently, all of the cars were seized; is that correct? A. That is correct.

[12] Q. Now, were those seizures made by persons under your group, or in your group? A. No, they were not.

Q. Do you know the names of the persons who seized the automobiles? A. I know the name of some of the people. John Haacke, revenue officer, Joe White, revenue officer. I'm not sure who else was actually involved in seizing the vehicles, but there were several people involved.

MR. LEEDY: Can you find that out for me by noon, and we can get this amended complaint then.

MR. ANDOLINA: Yes. Just seizing of the cars, now?

MR. LEEDY: Yes. Because we've lost all those seizure notices.

MR. ANDOLINA: Do we have any of those in the file, bert?

THE WITNESS: We have all the seizure notices.

MR. ANDOLINA: Can we produce them? A. The seizure notice is signed by a revenue officer.

Q. (By Mr. Leedy) Right. A. But it might not be all of the people. In other words, there might be two or three people assisting, and only one person would sign the notice of levy, you see. But I can sure find out, yes, who was involved for you.

MR. ANDOLINA: Okay. They'd appreciate it.

[13] THE WITNESS: Uh huh.

Q. (By Mr. Leedy) At sometine was a determination made to raid the premises at 4751-4752 Holladay Boulevard? A. There was never any plan to raid any residence.

Q. That isn't a residence, for your information. A. Okay. There was never any plan to raid any house or property of the taxpayers.

Q. Well, in fact, a raid occurred; is that correc? A. No, a raid did not occur.

Q. Oh. Tell me what occurred at 4751-4752 Holladay Boulevard. A. This, I believe, is the cottage and building owned by Real Estate, Incorporated.

Q. That's correct. A. At least this is how it's shown at the County Recorder.

On the 22nd, which was the day after the assessment took place, it was discovered through various investigative sources that one, possibly two high-priced cars were located at this residence. I believe it was a blue Stutz automobile, Blackhawk automobile. So two revenue officers went there to investigate it. And I believe it was Mr. Haacke and Mr. White, again.

So they called in to me and indicated that, yes – as I remember, again – there was a car, possibly two cars – [14] I can't remember if there was one or two cars there, but there were cars or car stored there. They wanted to know what they should do.

So at that point I indicated that – they also indicated that there appeared to be an office building

there, and from what investigation they had done that this was possibly the offices of Mr. Norman, where he transacted his business; there had known to be an employee there, who had worked there, and they just told me a little bit about what was located there. They wanted to know what they should do. So at that point I said I would come out and take a look at it.

So myself and Kles Hilton went out there to meet them. and I'm not sure that they actually called the special agents, but at least the special agents somehow found out about it. I may have called them for assistance. We all went out there and met at the scene of the Holladay Boulevard business.

Q. Okay. How many persons were there at that time? A. When I got there, there were several people there. And one thing that may have made it look like a raid, when in fact it was not, was the fact that there were maybe six or seven IRS people there, but there were several other people there who were not associated with the Internal Revenue Service.

Q. Wo were they, and how did they happen to be there? [15] A. Well, I think there were one or two people there from the service station located right by the business. We had inquired there and found out as to the business before going over there. There was the son of Mr. Norman there, George Norman, III. There was Mr. Redd – R-e-d-d, I believe – who was a contractor with Mr. Norman, he was there. There appeared to me a couple, three neighbors also there. I don't know if they were neighbors, but there were two or three people that I had never seen before there. There was myself and three revenue officers there; two being there, one going out with me. There was two or three special agents who arrived there shortly after – I believe they arrived shortly

after we got there. So I would guess maybe six to seven IRS people, maybe six to seven non-IRS people, some of whom I do not know who they were.

Q. Tell me what occurred upon your arrival at the scene. A. Yes. The revenue officers were looking at the Stutz car in the garage, so we went into the garage and started to look at it. And about that time George Norman, III came up. Also Mr. Redd was there. We asked Mr. Redd several questions about the place: what type of a place was it, was it offices, was it a residence, what was its purpose, who used it?

Q. Before we go into that – [16] A. All right.

Q. – do you know how entry was made into the garage? A. Yes. I believe that – well, I'm not sure about this, but I think the revenue officers had the lock cut off the garage.

Q. Now, go on. Apparently we are right now to a point where somebody is talking to Mr. Redd. A. Okay. But you might be interested in this.I'm not sure if there's a window there, or not, so they could see that there was a car. I don't know this. But they had determined that there was this car in there, so I believe that they cut the lock off. In fact, Mr. Norman was, George Norman, III was excited about the removal of his lock. We talked to Mr. Redd and found out a lot of information about the premises.

Q. What information did you find from Mr. Redd? A. We asked him what the place was used for. He indicated it was the offices, or the place where Mr. Norman had offices, sometimes had an employee, and that's where he was, and carried out much of his business.

Q. Okay. Then what happened? A. Then George Norman, III became very upset about us proceeding to seize – the determination had been made to seize the car, the Stutz. He became very upset.

Q. What did he say? [17] A. He says, "You guys can't do this." He says, "Why are you doing it?" et cetera, et cetera, et cetera. I don't remember his exact words, but he was very upset.

Q. Do you recall who responded, and what they said? A. I did. I talked to him. I asked him why not.

He says, "Well, this is not Mr. Norman's car, it has nothing to do with the Normans." He says, "I believe, in fact, it's G.M. Leasing's car."

I asked him he he could find the registration so we could see how it was registered. I don't remember if it had license plates or not on it. He entered the car and looked through it, could not find a registration.

At that point it was determined that we should not then seize the car, not knowing for sure how it was registered. I asked George Norman, III if he would provide me with information about the car, how it was registered, so we could make a determination as to whether we should go ahead with the seizure or not. He said that he would provide me this information.

At that point, as I remember, there was some milling around, and talking, and then we left.

Q. Now, was there a time when entry was made into the cottage? A. Yes, there was.

Q. Was that on the same occasion? [18] A. Yes, there was.

Q. Okay. Tell me about that. A. Okay. As we arrived on the scene, Kles Hilton and myself, there was two locksmiths there. I presume that they had also assisted in opening up the lock to the garage. The back door was open.

Q. Do you know who called the locksmiths? A. I presume it would be John Haacke or Joe White.

When I got there, I walked into the house and the locksmith was changing the lock.

Q. Now, you indicated the back door was open. Do you know whether or not the locksmith opened it, or whether it was left open? A. The locksmith had opened the back door to the cottage.

Q. And, to your understanding, this was done at the direction of the Internal Revenue Service, I guess? A. I presume that it would be done at the direction of probably Mr. Haacke or Mr. Joe White of the Internal Revenue Service.

Q. Okay. A. When I walked in, I looked around, asked them what was happening, what was going on. They said that they were in the process of seizing the building and the car. So I asked around a little bit, looked around. And I was a little [19] bit reluctant, to tell you the truth, at that point as to whether we should seize the house. The outward appearance of the house was such that it could be, from looking at it, a personal residence. Of course, we do not seize personal residences, at least by forced entry. So I was concerned. There was a kitchen, which looked to me like it could be a kitchen like was found in a residence.

Now, keep in mind, at this point I had not been able to talk to anybody like Mr. Redd, to look through the offices, to see what type of business transacted there, or if it would be a personal residence or not. But I was very concerned. So I says, "You guys, I don't think we'd better proceed with the seizure." I says, "Until we have a chance to check this out entirely, I think we'd better back off from the seizure."

So at that point we closed the door and did leave the cottage. We had not touched anything in the cottage, nothing was inspected, nothing was taken. I don't think we were in the cottage more than a matter of a very, three or four minutes at the most.

So the cottage door was locked, and that was the extent of the entry on that day, which I believe was the 21st.

Q. You indicated the locks were changed; is that correct? A. They were in the process. They had just opened the [20] door. And it's our policy to change the locks, so they were in the process of changing the back door lock. When I instructed them we were not going to make the seizure, they changed the locks back to their normal locking, original locks,

Q. Thereafter, after your leaving the premises, I assume that another decision was made to seize the cottage. A. Yes. This was one or two days later. I believe it was two days later that the cottage was actually seized.

Q. When was this determination made? A. A lot took place in the next two days, before the actual cottage was seized. I believe the cottage was seized on the 23rd, which was a Friday. Again, meetings were held each morning with the Internal Revenue Service people, and the case was discussed as to what had taken place, what we'd found out, who we'd talked to. And so I would suppose that probably either Thursday or Friday morning – the exact time I'm not sure of – the determination was made to seize the cottage.

Q. Who was present when the determination was made? A. I would presume that the same people were present that were there on the first meeting.

Q. Would you name them for me please? A. I think myself, John, or Jim Livsey, Kles Hilton, John Green, Revenue Agent Phil Clayton, Special Agent Ron [21] Harrington, Special Agent Tim Ellison, and also Joe White, I think, and John Haacke were also present, revenue officers.

Q. Tell me what was said, and by whom, at that meeting that led to the determination to seize the

cottage. A. Again, the meeting was quite long. Several people spoke. Everybody spoke, in fact, at one time or the other. We discussed what information and investigation we had regarding the case, and factors were discussed as to what's taken place in determining whether we should seize the cottage or not, and we did determine that we should seize the cottage. Again, exactly who said, "Let's seize the cottage," I'm not sure anybody did. But it was discussed with counsel again, and the determination was made to go ahead and seize it.

Q. Was there any discussion and determination made to seize the contents of the cottage? A. Definitely so.

Q. What was said about that? A. Well, going back to the cottage, on the night of the 22nd, I believe it was – maybe it was the 21st. It must have been the 21st. It was the same date that we were originally out to the house. People were observed in different parts of the night going to the cottage, removing boxes of material from the cottage. That was also the same night that the blue Stutz, that we had looked at that same day, was stolen, or at least taken from the cottage and hidden, which we later found.

[22] There was a lot of activity there that night. The lights were on, and a lot of hustle and bustle back and forth. We had no idea what they were taking out of there that night. We did know the next morning that the car was taken. So it was discussed at our meeting about what is there inside the house, were there assets that could be used, to seize and could be used to pay the tax?

So this would be the main purpose of us going there, would be to seize the furnishings. It was presumed and later found that the house was very well furnished with, I would say, above-average-priced furnishings. So we were interested in seizing these furnishings and any other assets that we could find to value to apply to the tax.

Q. Did any discussion occur concerning seizing the books and records that were stored there? A. To my knowledge, there was no specific reason for going there and seizing the books and records.

Q. That was never discussed? A. It may have been discussed. Because we did know that there would be an office space there, and you could assume if there was an office space that there would be several books and records. This may have been discussed. I am not sure. It was, however, discussed after the seizure was started. In fact, immediately upon going there – I know it had been discussed at that point, at the time that the [23] seizure, we actually went in the house. But I also believe it was discussed prior to the actual seizure.

Q. But you can't recall any such discussion. A. I can recall some of the concerns, as to what we should do with the books and records.

Q. Can you recall who said what? A. Yes. In fact, we were concerned about it, and it was discussed with Richard Brennan again, of Regional Counsel.

Q. Who discussed it with him? A. I think probably John Green, Special Procedures Officer, did.

Q. Can you recall what was said? A. Not in detail. But from hearing what was going on, and being involved, there was concern as to whether we should seize the books and records, whether this would later taint our court case, if there was an upcoming court case later. So it was discussed as to what should we do with the books and records if in fact we did seize the building.

MR. ANDOLINA: I want to note an objection to the answer to the question, as based on hearsay, just for the record.

Q. (By Mr. Leedy) Can you recall what Mr. Brennan responded? A. Yes. He instructed us to have the boxes

sealed uped and removed to a safe storage place, which we did.

[24] Q. Was there any discussion concerning a search warrant or a summons? A. No, there was not.

Q. After Mr. Green's discussion with Mr. Brennan, what happened? A. Well, again I'm not sure, exactly, if it was John Green that talked to him or exactly who did talk to him. It could even have been myself, in another discussion with him concerning the records. But we proceeded to go out to the residence and make the seizure.

Q. And how many persons went out at that time? A. Again, I believe there was one or two special agents. It's our policy to, on seizures, if we expect any trouble whatsoever, to send along a special agent for protection. Again, I'm not sure who was there in the way of a special agent, or even if there was a special agent, but I do know that I assigned two revenue officers to make the seizure.

Q. To backtrack a little bit, is that the only reason there was a special agent along, to protect the officers? A. I do not know. I had not requested three or four special agents. But this was a very large case, we did expect possible trouble, based upon our confrontation with George Norman, III. We also heard that Fred Norman, the brother of the taxpayer, was in town; there had, prior to this time, been several strange things happening, like missing [25] stocks and bonds, and shuffling of records, bank account cleaned out, safety deposit boxes, cars being stolen. This, a lot of it was happening. We expected possibly anything to happen. So it would be normal policy for us to send along a special agent for protection, and to keep the peace, if you wanted to word it that way.

Q. To your knowledge, was there a fraud investigation going on at the same time as your proceedures? A. I had heard, prior to even receiving the tax assessments, that

there was – special agents involved on the case. This came about because of a taxpayer delinquency investigation that I had assigned to a revenue officer concerning unfiled income tax returns of Mr. Norman. And at that point, some days or weeks or months before – I'm not sure exactly when – I was aware that there was interest in the case by the Intelligence Division.

Q. How many officers, IRS employees, arrived at the cottage on that particular day? A. The date that the actual seizure was made?

Q. Yes. A. I was not there, so I couldn't say. But there must have been at least four, plus the moving and storage people.

Q. You were not at the cottage at the time the seizure was made? A. No, I was not.

[26] Q. Have you been informed as to what occurred at that time? A. Yes, I was informed of that.

Q. By whom were you informed? A. By the revenue officers.

Q. And who was that? A. Keith Finley, and I believe Clark Holfeltz.

Q. Were they there? A. Yess, I believe they were there.

MR. LEEDY: Off the Record.

(Discussion off the record)

Q. (By Mr. Leedy) What did these officers report to you occurred? A. that they had to wait quite a while for the storage men to get there. The storage men came, they immediated to inventory everything that was there, and they did take a complete inventory of all the furnishings, numbered everything. They also had the storage men box up all the books and records, number the boxes, and remove all of the furnishings and records. But a complete inventory was taken.

A. I assume that the locks were broken into at this time, too. A. It is our policy, when we seize something like a building or a house, to have the locks changed for security purposes.

[27] Q. And that was done. A. Yes, it was.

A. Are you aware of a determination that was made to open the boxes of books and records that were seized from the cottage? A. This, to my knowledge, now – I was not involved in any of this – occurred some weeks later. Is it not true? And I was not in on the determination, did not attend the opening of the boxes and records, so I had nothing to do with it; other than hearsay again as to, yes, that this was going to take place.

Q. Who told you about it? A. I don't Know.

Q. Do you recall what was said? A. No. Again just, you know how the grapevine works.

Q. Are you aware of a determination made to photostate all the books and records; A. I'm aware that this was determined, and I think did take place. But I was not present, and am not aware of the determination being made or by who.

MR. LEEDY: I have noghing further.

CROSS-EXAMINATION

BY MR. ADOLINA:

Q. Mr. Applegate, is it normal, in attempting to effect collection of a delinquent tax account, to seize books [28] and records of the taxpayer? A. Yes, it is. It is not a normal situation generally. In other words, what we're looking for is the collection of the tax. If we feel like books and records will be helpful, or give rise to assets, it is normal for us to seize these. For example, accounts receivable, stock records, books of stocks and bonds, that might lead us to things like this, bank deposits, bank statements, these are very useful in determining and

finding assets. And it is normal procedure, if we suspect that they will be beneficial, for us to seize books and records, yes.

Q. So the basis for seizing the books and records in most cases is that there may be some assets which either are in the books and records or can be found from the books and records; is that correct? A. It is a very good source for determining where to find assets, yes.

MR. ADOLINA: Nothing further.

REDIRECT-EXAMINATION

BY MR. LEEDY:

Q. That leads me to a question: If you were going to seal the books and records, and if your only purpose for seizing them would to be examine them to find assets, in this case you were going to seal them, why would you seize them. A. The seizure wasn't made specifically for the purpose [29] of seizing the books and records. It was – we didn't know what was in that house. There had been a lot of activity the night before, several things removed. So we were very anxious to get there and secure the property, make an examination for assets, whether they be furnishings, equipment or a safe. We had heard that there was an under-floor safe there, with large amounts of assets in it, which we never did find. But it wasn't the specific purpose to go there to seize the books and records, to look for assets, although this was a possible alternative, which was not used at that time because at the instruction of Mr. Brennan we should seal them up.

Q. You lead me to wonder why were they seized at all, if they were going to be sealed up? A. Well, the house has been broken into once. An unattended house, with open windows – several times we've been called there because of open windows – the security is very poor, it

just isn't a good idea to leave voluminous books and records which may be valuable to us, may be valuable to the taxpayer, in an open, unattended and unguarded building. So the best thing to do would be to box them up, number them, and put them in the vault at Redman Moving and Storage, which was done.

Q. Didn't you place a guard on the building, for a watch? [30] A. No. We did hire Deseret Detective Agency to routinely patrol it, we notified the Sheriff. But as far as an actual guard goes, no. No guard was there, although it was watched rather closely by us for the next few days.

Q. Is your answer then, that you seized the books and records to preserve them? A. Again, this was at the instruction as to what to do with the books and records by Mr. Brennan, our counsel. So I don't think that that would be the correct answer, that you mentioned. Although it was his instruction, and it seemed to be the best thing to do at the time.

Q. Then are you telling me that the reason you seized the books and records, and sealed them, is that Brennan told you, and for no other reason? A. No. We would be very interested, as I mentioned before, in going through books and records to find assets.

Q. But, of course, you don't do that in this case, because Brennan told you not to; right? A. That's correct.

Q. Now, go back to the original question. What was the reason for seizing the books and records? A. Well, of course, we'd already seized the building and premises at the time. I'm not sure when we discussed what to do with the books and records, if it was before the seizure or at the time of the seizure, with Mr. Brennan. But [31] I guess, the way you worded the question, that was not the

purpose of seizing them, was to preserve them. But that's what ended up, we did preserve them. Does that help?

Q. The original idea was to hunt for assets. But then after Brennan told you, that your idea changed just to preserve them? A. I think maybe that would be correct, yes.

MR. LEEDY: I have nothing further.

MR. ANDOLINA: No further questions.

(Whereupon the deposition terminated.)

[Defendant's Exhibit 2]

UTAH

DEPARTMENT OF EMPLOYMENT SECURITY

October 18, 1972

G.M. Leasing Corp.
c/o Shirley P. Jones, Jr.
340 East 4th South
Salt Lake City, Utah 84111

Gentlemen:

Status

We have received information from the Secretary of State that your corporation has been authorized to do business in the state of Utah.

We need information with which to determine your status under the provisions of the Utah Employment Security Act. We are enclosing two copies of Form 1, "Status Report." Will you please complete this report covering your activities in Utah and submit one copy to our office within ten days from the date of this letter.

If you have had no activities in Utah and do not expect to pay wages in this state, will you please give us a statement to that effect on Form 1.

Very truly yours,

/s/ Harold P. Clawson
Harold P. Clawson
Asst. Status Supervisor

Form 1 Rev. 7-71

UTAH DEPARTMENT OF EMPLOYMENT SECURITY

1234 South Main Street - Salt Lake City, Utah 84111
P.O. Box 11800

STATUS REPORT

To complete this report properly, please read instructions on reverse side. COMPLETE ALL ITEMS.

1. Type of ownership
☐ a. Individual ☐ b. Partnership ☑ c. Corporation ☐ d. Other (Specify)

2. Name of owner, names of partners, or names of corporate officers
George T Newman Pres. St. Louis Mo. U.S.A. Owns

3. Corporation name, trade name or business name
G M Leasing Corp

4. Mailing address (number and street, city, state and zip code)
340 E 4th South S.L. City Utah

5. Address of establishment or agent's location if different from above

6. Date above owner began operations in Utah
April 27 1972

7. Federal Employer Identification Number

8. ☐ a. Business acquired from another operator ☑ b. New business in Utah - omit Items 9, 10 & 11

9. Name and address of previous operator

10. Did you acquire assets from previous operator? ☐ a. No ☐ b. Yes If yes complete following:
☐ All of previous operator's assets. ☐ ____% of previous operator's assets.

11. Did previous operator continue to operate a business after the transfer?
☐ a. No ☐ b. Yes • enter name and address of business retained

12. Enter below the amount of wages you have paid in Utah during each calendar quarter since you acquired or acquired the business. IF YOU HAVE PAID NO WAGES, ENTER THE WORD "NONE". (See instructions for definition of wages.)

Year	Jan. 1 to Mar. 31	April 1 to June 30	July 1 to Sept. 30	Oct. 1 to Dec. 31
1972		N.	O.	N
1973	None			

13. If you have not paid wages totaling $140.00 or more during any calendar quarter, do you expect to pay that amount in a future quarter? ☐ No ☐ Yes • show quarter ending date 3rd 30 1973
It is your responsibility to notify this Department if you become a "Subject Employer" at a later date.

14. Describe your principal business activity (See instructions)
Leasing Luxury Automobiles, Boats, etc.

15. County in Utah in which your principal activity is located: S.L.

16. Average number of employees: 0

17. I certify that the information contained in this report is true and correct:

Signed Morgan A. Jones Jr. Title Vice Pres. Treas. Date Jan. 23, 1973

Signed _____ Title _____ Date _____

Signed _____ Title _____ Date _____

[Defendant's Exhibit 3]

STATE TAX COMMISSION OF UTAH
STATE OFFICE BUILDING SALT LAKE CITY, UTAH 84114

STATE OF UTAH
SALES AND USE TAX RETURN
FOR STATE AND LOCAL SALES AND USE TAXES

APR.-JUN. 1972
DUE JUL 30, 1972

ACCT. NO. U 63125

NAME AND ADDRESS (PLEASE CORRECT ANY ERROR)
G M LEASING CORP
340 E 4TH SOUTH
S L CITY UT 84111

18 122

IF BUSINESS HAS DISCONTINUED OR HAS BEEN SOLD OR TRANSFERRED, GIVE DATE. IF A CHANGE OF OWNERSHIP, PLEASE ATTACH STATEMENT.

PLEASE READ INSTRUCTIONS ON BACK OF DUPLICATE

	I. SALES TAX — REPORT IN UTAH	II. USE TAX — OUTSIDE UTAH
1. TOTAL SALES	$	
2. DEDUCT EXEMPT SALES (Explain on Schedule A)	$	
3. TAXABLE SALES (Line 1 less Line 2)	$	$
4. ADD 6% Compensating Use Tax from Schedule B, Col. 2		$
5. TOTAL TAX (Line 3 plus Line 4)	$	$
6. CREDIT FOR SALES TAX PAID TO OTHER STATES (Schedule C)	$	$
7. NET TAX (Line 5 less Line 6)	$	$
8. TOTAL STATE TAX (Line 7 plus Line 7 Col. II)	$	
9. LOCAL TAX - SINGLE PLACE OF BUSINESS - 1% OF ____% OF LINE 1	$	$
A. FOR MULTIPLE PLACES OF BUSINESS - COMPLETE SCHEDULE A	$	$
B. FOR UTILITIES, VENDING MACHINES, CONTRACTORS, ETC. - COMPLETE SCHEDULE B	$	$
C. CREDIT FOR CORRECTIONS OF TAX - COMPLETE SCHEDULE C		$
10. TOTAL LOCAL TAX (TOTAL OF LINES 9A, 9B AND 9C)	$	$
11. TOTAL TAX (ON SINGLE LINE IF APPLICABLE)	$	$

PENALTY OF 5% PLUS INTEREST AT 1% PER MONTH IS TO BE PAID FOR EVERY VIOLATION OF THE SALES AND USE TAX LAWS AS SET FORTH IN SECTIONS 59-15-11 AND 59-15-12 UTAH CODE ANNOTATED 1953 AS AMENDED.

12. PENALTY
13. INTEREST
14. TOTAL DUE

I CERTIFY THAT THE INFORMATION CONTAINED IN THIS RETURN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

SIGNED _____ TITLE _____

MAIL THIS RETURN WITH REMITTANCE TO:
STATE TAX COMMISSION OF UTAH

RETURN DUE NOT LATER THAN

BEST COPY AVAILABLE

[Defendant's Exhibit 4]

1040 US Department of the Treasury / Internal Revenue Service
Individual Income Tax Return

Please print or type

George I. and Frances — Norman

2501 Olympus Drive

Salt Lake City, Utah 84117

Filing Status—check only one:
1 ☐ Single 2 ☒ Married filing jointly
3 ☐ Married filing separately and spouse is also filing
4 ☐ Unmarried Head of Household
5 ☐ Surviving widow(er) with dependent child
6 ☐ Married filing separately and spouse is not filing

Exemptions
7 Yourself ☒
8 Spouse ☒
9 First names of your dependent children who lived with you: George III, Ted, Eric, Jonathan
10 Number of other dependents (from line 34)
11 Total exemptions claimed

Please attach Copy B of Form W-2 to back

Income
12 Wages, salaries, tips, etc. (Attach Forms W-2 to back. If unavailable, attach explanation)
13a Dividends ($100 exclusion $) 13b Less exclusion $ Balance ▶ 13c
(Also list in Part II of Schedule B. If gross dividends and other distributions are over $100)
14 Interest. Enter total here (also list in Part II of Schedule B. If total is over $100)
15 Income other than wages, dividends, and interest (from line 40)
16 Total (add lines 12, 13c, 14 and 15)
17 Adjustments to income (such as "sick pay," moving expense, etc. from line 48)
18 Adjusted gross income (subtract line 17 from line 16) Schedule
19 Tax (Check if from Tax Tables 1-12 ☐, Tax Rate Schedule X ☐, Y ☐, Z ☐, or Schedule G ☐)
20 Tax surcharge. See Tax Surcharge Tables A, B and C in instructions. (If you claim retirement income credit, use Schedule R to figure surcharge)
21 Total (add lines 19 and 20)

Tax and Surcharge

Payments and Credits
22 Total credits (from line 55)
23 Income tax (subtract line 22 from line 21). Estimated
24 Other taxes (from line 61)
25 Total (add lines 23 and 24)
26 Total Federal income tax withheld (attach Forms W-2 to back)
27 1973 Estimated tax payments and amount applied from 1972 return
28 Other payments (from line 63)
29 Total (add lines 26, 27, and 28)

Please attach Check or Money Order here

Bal. Due or Refund
30 If line 25 is larger than line 29, enter BALANCE you owe and pay in full with return ▶
31 If line 29 is larger than line 25, enter OVERPAYMENT ▶
32 Line 31 to be: (a) Refunded ▶ (b) Credited to 1974 estimated tax ▶

Sign Here
Your signature
Date

[Defendant's Exhibit 8]

Salt Lake City — 6731-1011

George I. Norman, Jr.

2501 Olympus Drive
Salt Lake City, Utah 84117

1040	7012	3-19-73	292-[illegible]	[illegible]
1040	7112	3-19-73	292-[illegible]	[illegible]

Salt Lake County Recorder
Salt Lake City, Utah

Salt Lake City, Utah

10th March 73

BEST COPY AVAILABLE

[Defendant's Exhibit 9]

Salt Lake City 5701-1036

Frances M. Norman

5011 Cypress Drive
Salt Lake City, Utah 84117

1040	7712	3-19-73	251-10-9425	109,205.00
1040	7112	3-19-73	251-10-9425	44,973.50

Salt Lake County Recorder
Salt Lake City, Utah — Total 154,178.50

Salt Lake City, Utah

20th day of March 73

[Defendant's Exhibit 10]

Form 668-B (Rev. Jan. 1970) — Internal Revenue Service — Levy

Due from: Real Estate, Inc. as Alter Ego, Nominee, Agent, or Transferee of Frances M. Norman

Salt Lake City, Utah

Tax Form Number	Tax Period Ended	Date of Assessment	Identifying Number	Unpaid Balance of Assessment	Statutory Additions	Total
1040	7712	3-19-73	251-10-9425	$	$	$
1040	7112	3-19-73	251-10-9425			

Total Amount Due

There is now due [illegible] from the above taxpayer with respect to the taxes listed above, including penalty and interest provided by law. Demand has been made upon the taxpayer for payment of the amount due, but payment has not been received. Therefore, pursuant to section 6331 of the Internal Revenue Code of 1954, notice is given that all property and rights to property, including any interest in property subsequently acquired by the taxpayer, belonging to the taxpayer and upon which there is a lien for the amount due, are hereby levied upon to satisfy the taxes listed above.

Dated at Salt Lake City, Utah on 27nd day of March

Signature: [signature] — Title: Revenue Officer

BEST COPY AVAILABLE

[Defendant's Exhibit 11]

United States of America

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

Date: January 14, 1974

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I certify that the annexed: is a true Form 4340, Certificate of Assessments and Payments, for George L. & Frances M. Hotman (Jr.), [illegible] Olympus Drive, [illegible] City, Utah, for U.S. Individual Income Tax (1040), for the year 7012, and that I am the keeper and have custody of the records from which the said Certificate of Assessments and Payments was prepared

On file in this office.

IN WITNESS WHEREOF, I have hereunto [illegible] hand, and caused the seal of this office to be affixed on the day and year first above written.

By direction of the Secretary of the Treasury

John C. Hammond

[illegible]

BEST COPY AVAILABLE

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

NAME OF TAXPAYER: George L. & Frances M. Hotman (Jr.)

ADDRESS: 2401 Olympus Drive, Salt Lake City, Utah

SSN: 22-22-1521

PERIOD ENDING: 7012

DATE (a)	EXPLANATION OF TRANSACTIONS (b)	ASSESSMENT (ABATEMENT) (c)	CREDIT (CREDIT REVERSAL) (d)	DLN OR ACCOUNT NO (e)	DUE DATE (f)	BALANCE (g)
	Extension of			87277-121-10210-71		
6-11-71	Time for Filing Granted to 6-15-71					
	Extension of			87277-177-17020-71		
7-19-71	Time for Filing Granted to 8-15-71					
	Extension of			87277-121-10021-71		
7-19-71	Time for Filing Granted to 8-15-71					
	Extension of			87277-225-10020-71		
8-31-71	Time for Filing Granted to 10-15-71					
	Amended			87211-525-90000-71		
11-15-71	Return Filed	.00				
	Payment with Amended Return		229,000.00			
	Filed	280,000.00				
	Delinquent			87051-078-10000-73	3-19-73	
	Penalty (Section 6651 a 1 IR Code 1954)	70,000.00			3-19-73	
	Negligence Penalty	14,000.00			3-19-73	

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

NAME OF TAXPAYER: George I. & Frances M. Hansen (Jr.)

ADDRESS: 2201 Olympus Drive [illegible] Salt Lake City, Utah

[illegible]-20-1261

DATE (a)	EXPLANATION OF TRANSACTIONS (b)	ASSESSMENT (ABATEMENT) (c)	CREDIT (CREDIT REVERSAL) (d)	BALANCE (e)	DLN OR ACCOUNT NO (f)	23C DATE (g)	PERIOD ENDING (h)
							7012 coal.
	(Section 6653(b) IR Code 1954)						
	Interest	42,039.34			87[illegible]1-07[illegible]-[illegible]73 8[illegible]17-116-[illegible]73	3-19-73	
4-16-73	Payment		37.00		8[illegible]17-116-[illegible]73		
4-16-73	Payment		1,058.74		87[illegible]1-[illegible]-[illegible]73		
5-28-73	Abate Interest	(31,447.56)			87217-156-[illegible]73		
6-1-73	Payment		2.00		87217-234-01011-73		
7-18-73	Payment		5,030.57		[illegible]-234-01010-73		
7-18-73	Payment		568.97		87217-211-[illegible]73		
8-22-73	Payment		2,485.42		87217-240-[illegible]73		
8-29-73	Payment		4,633.24		87217-200-10201-73	10-1-73	
	Audit Deficiency	.00		71,035.84			

100

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

NAME OF TAXPAYER: George I. & Frances M. Hansen (Jr.)

[illegible]-20-1261

DATE (a)	EXPLANATION OF TRANSACTIONS (b)	ASSESSMENT (ABATEMENT) (c)	CREDIT (CREDIT REVERSAL) (d)	BALANCE (e)	DLN OR ACCOUNT NO (f)	23C DATE (g)	PERIOD ENDING (h)

The foregoing transcript contains a statement of all unidentified or advance payments, if any, made by the above taxpayer for the period stated.

This certification covers District 87.

101

SIGNATURE OF OFFICER: John O. Russell by Lowell J. Higbee, Chief, Accounting Branch

DATE: January 14, 1974

Ogden, Utah

U.S. TREASURY DEPARTMENT INTERNAL REVENUE SERVICE

FORM 4340 9-67

United States of America

TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE

Date: January 10, [illegible]

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

I certify that the annexed is a true copy of assessments, payments, [illegible] as appears on the records of this office relative to the income tax liability for the taxable year ended December 31, 1971 of George I & Frances M Norman (Jr), 2501 Olympus Drive, Salt Lake City, Utah, 233-22-1561, as appears from the records of assessments and [illegible] in my custody.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of this office to be affixed on the day and year first above written.

By direction of the Secretary of the Treasury:

[signature]
Commissioner of Internal Revenue

On file in this office

Page 1

CERTIFICATE OF ASSESSMENTS AND PAYMENTS — Income

NAME OF TAXPAYER	ADDRESS	IDENTIFICATION NO.
George I & Frances M Norman (Jr)	2501 Olympus Drive Salt Lake City, Utah	233-22-1561

DATE (a)	EXPLANATION OF TRANSACTIONS (b)	ASSESSMENT (ABATEMENT) (c)	CREDIT (CREDIT REVERSAL) (d)	BALANCE (e)	DLN OR ACCOUNT NO. (f)	23C DATE (g)	PERIOD ENDING (h)
							7112
4-15-72	Payment		405,125.00		87217-119 70550-72		
	Subsequently Disallowed						
6-19-72	Extension of Time to File				29277-162 70609-72		
	Granted to 6-12-72						
7-6-72	Extension of Time to File				87277-169 10735-72		
	Granted to 8-15-72						
7-24-72	Dishonored Check	405,125.00			87287-131 40000-72		
	Dishonored Check Penalty	4,051.25				7-24-72	
	(Section 6657 IR Code 1954)						
8-30-72	Extension of Time to File				87277-232 10071-72		
	Granted to 10-15-72						
	Return Filed	397,353.94			87251-078 10001-73	3-19-73	
	Delinquent Penalty	99,338.49				3-19-73	
	(Section 6651 a 1 IR Code 1954)						

CERTIFICATE OF ASSESSMENTS AND PAYMENTS

NAME OF TAXPAYER	ADDRESS	IDENTIFICATION
George I & Frances M Norman (Jr)	2551 Olympus Drive Salt Lake City, Utah	223-22-1361

DATE (a)	EXPLANATION OF TRANSACTIONS (b)	ASSESSMENT (ABATEMENT) (c)	CREDIT (CREDIT REVERSAL) (d)	BALANCE (e)	DLN OR ACCOUNT NO. (f)	23C DATE (g)	PERIOD ENDING (h)
							7112 contd
	Negligence Penalty (Section 6653 a IR Code 1954)	19,867.70			37251-078-10091-73	3-19-73	
	Interest	28,759.46				3-19-73	
	Abate						
5-28-73	Interest	(659.14)					
	Audit				37247-220-		
	Deficiency	.00			10250-73	10-1-73	
				548,702.70			

The foregoing transcript contains a statement of all unidentified or advance payments if any made by the above taxpayer for the period stated.

This certification covers District 87.

FOR [illegible] by Bevan J. Higbee, Chief, Accounting Branch

LOCATION: Ogden, Utah

DATE: January 14, 1974

U. S. TREASURY DEPARTMENT - INTERNAL REVENUE SERVICE FORM 4340 (9-67)

BEST COPY AVAILABLE

[Caption Omitted in Printing]

AMENDED COMPLAINT

Plaintiff alleges:

1. Jurisdiction of this action is invoked pursuant to 28 United States Code 1340; and Rule 41 Federal Rules of Criminal Procedure.

2. Venue in this action is properly laid in the Central Division for the District of Utah as the actions complained of by the plaintiff against the defendants occurred in Salt Lake County, State of Utah.

3. The United States of America is made a defendant in this action as the actions complained of by the individual defendants were as agents and employees of the United States of America and also the United States of America is required to be made a party under 26 U.S.C. Section 7426; the Department of the Treasury and Internal Revenue Service is made a party to this action as the individual defendants are more directly agents and employees of the Department of the Treasury, Internal Revenue Service; Roland V. Wise, District Director, is made a defendant in this action as he has direct supervision over the individual revenue officers about whose actions the plaintiff complains and also Roland V. Wise as District Director made certain decisions and instructions about which plaintiff complains; James Livsey, Glenn S. Hilton and John W. Haacke and John Doe I through V are individual revenue officers, employed by the United States of America, Department of the Treasury, Internal Revenue Service who committed certain acts, searches and seizures all in violation of the rights of the plaintiff.

4. Plaintiff is a Utah corporation, incorporated for the purpose of leasing certain automobiles; having separate

corporate existence; having four shareholders; and doing business in Salt Lake County, State of Utah.

5. An individual, George I. Norman, Jr. was president of plaintiff corporation, and had custody of the books and records of said corporation in his office located at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, which premises were and are owned by Real Estate, Inc.; said office was used by plaintiff not only to store their records, but also as offices of operation.

6. That sometime before the 23rd day of March, 1973, the exact date being uncertain to the plaintiff, the defendants Department of Treasury, Internal Revenue Service, and Roland V. Wise, as District Director of said Internal Revenue Service, or some other agent or employee of Roland V. Wise, whose name is unknown to plaintiff, made an assessment for income taxes alleged to be owing by George I. Norman, Jr., and Frances M. Norman, his wife; that said assessment was arbitrary, capricious and without foundation and did not take into consideration facts, circumstances, expenses, and payments all known to the defendants and said assessment was in the sum of $951,409.93 against George I. Norman, Jr., and $154,138.54 against Frances M. Norman.

7. That at some date, the exact time not being known to plaintiff, the defendant Roland V. Wise, as District Director of Internal Revenue Service and as an authorized delegate to the Secretary of the Department of the Treasury or Internal Revenue Service, or some other agent of Roland V. Wise, who was without proper authority, made the arbitrary and capricious determination that the collection of the tax against George I. Norman, Jr., and Francis M. Norman would be jeopardized by delay and then the defendant Roland V. Wise, or an agent of his, not authorized by proper authority or

law made demand, without notice, of the payment of said assessment, and, immediately thereafter, made certain levies and seizures.

8. That sometime, throughout the course of these events, the exact date not being known to the plaintiff, the defendant Roland V. Wise, as District Director of the Internal Revenue Service, or his agents who were not authorized by law, made an arbitrary and capricious determination that the plaintiff G. M. Leasing Corp., was either the alter ego, nominee, or transferee of George I. Norman, Jr.

9. One of the individual defendants, the name not being known to plaintiff, contacted one Shirley P. Jones, Attorney at Law, who was an officer and director of plaintiff G. M. Leasing Corp. and also was an attorney for George I. Norman, Jr., and requested permission or advised that they were about to enter the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, and said Shirley P. Jones advised that permission would not be given and that they had no authority in law to enter such premises and further that if such were done, it would be wholly contrary to law.

10. Thereupon James Livsey, Glenn S. Hilton and John W. Haacke, and defendants John Doe I, John Doe II, John Doe III, John Doe IV, and John Doe V, without authority and law, entered the premises at 4751-4753 Holladay Boulevard, contrary to the provision of the Fourth Amendment to the Federal Constitution and proceeded to search said premises in violation of the rights of privacy of plaintiff and its agent George I. Norman, Jr.

11. In the course of searching said premises, the defendants James Livsey, Glenn S. Hilton, John W. Haacke, John Doe I, John Doe II, John Doe III, John

Doe IV, and John Doe V, without authority and contrary to the provisions of the Fourth Amendment of the Federal Constitution seized the books and records of plaintiff corporation.

12. That the seizure of the books and records and files of plaintiff corporation, according to defendant James Livsey, was for the purpose of levying on assets of George I. Norman, Jr. and Frances M. Norman, and that such was a complete subterfuge as said books and records contained no assets and such seizure was totally unreasonable and unnecessary and this it is impossible for plaintiff corporation to reconstruct said books and records and files taken by defendants, and that plaintiff is fearful that unless said books and records and files are returned forthwith and immediately to plaintiff, that the same will be lost or destroyed and that plaintiff may suffer other losses by its failure to prepare its own tax return for both state and federal and that such loss or destruction or delay will create irreparable harm and damage to plaintiff corporation.

13. Thereafter, the defendants James Livsey, John W. Haacke, Glenn S. Hilton, John Doe I, John Doe II, John Doe III, John Doe IV, and John Doe V, made certain levies and seizures upon properties owned by the plaintiff, said property being in the form of automobiles; to-wit: one 1972 Stutz automobile, Serial No. 276571A72863, was seized from the premises of 4753 Holladay Boulevard, Salt Lake City, Utah; one Stutz automobile, Serial No. 276571A172678, was seized from the premises at 2147 East 4800 South, Salt Lake City, Utah; one Rolls Royce Phantom V limousine, Serial No. 5LUA59, was seized at 2300 East 4500 South, Salt Lake City, Utah; one 1930 Rolls Royce Phantom I, Serial No. 21649 was seized from said same premises; one 1971

four-door Stutz Salon, Serial No. 276579P364856 and one 1971 Stutz, Serial No. 276571A155699 was seized from the Century Plaza Parking Lot, Los Angeles County, California; and one Jaguar, Serial No. UC1L67176 BW was seized at 2501 Olympus Dirve, Salt Lake City, Utah.

14. That said levies and seizures of plaintiff's property were without authority of law and in violation of the Fourth Amendment of the Federal Constitution and deprived plaintiff of its property without due process of law in violation of the Fifth Amendment of the Federal Constitution.

15. That since the seizure of said automobiles the plaintiff corporation is unable to carry on its business which may result in substantial loss of revenue and income to said corporation.

16. Plaintiff corporation is not the alter ego, nominee, or transferee of either George I. Norman, or Frances M. Norman.

17. The defendants should be required to forthwith immediately account for all items seized from the premises at 4751-4753 Holladay Boulevard.

18. On or about May 30, 1973, the defendants admitting the illegiality of their actions returned boxes of books and records which they indicated were all of the books and records taken from the premises at 4751-4753 Holladay Boulevard.

19. At the time of the return of the boxes containing books and records, the defendant John Doe I, stated to plaintiff's agent, an attorney Walter Ellett, that the defendants had indeed searched through those books and records prior to returning them to plaintiff and had made photostats of said books and records.

20. That by virtue of the illegal actions of the defendants and to prevent said defendants from reaping the

fruit of their illegal actions, not only should the photostats of the books and records be suppressed from the defendants, but they should be forever barred from using any such photostats of books and records illegally obtained in any proceeding of any kind and should be further barred from reacquiring the same by any means.

21. Plaintiff is entitled to an order of this Court releasing the levies and seizures upon the automobiles illegally obtained by defendants and requiring the defendants to return said automobiles to plaintiff and for an order of this Court preventing and barring the defendants from ever reacquiring said automobiles.

22. That in addition to the loss caused by the seizure of the records and seizure of the automobiles, the plaintiff has sustained loss by virtue of the defendants releasing two of said automobiles to a lienholder of said automobiles without notice to plaintiff and said lienholder selling said automobiles at far below their market value.

23. Plaintiff is entitled to a judgment against the individual defendants for the damages, in an amount not yet determined, caused by their illegal action which violated the constitutional rights of the plaintiff.

WHEREFORE, plaintiff prays judgment against the defendants as follows:

1. That the Court issue its immediate order to show cause requiring the defendants to appear on a day certain and to show cause, if any they have, why the photostats of the books, papers, records, files and documents of plaintiff corporation should not be returned to plaintiff, or destroyed, said photostats being from the books, papers, records, files and documents seized from the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah.

2. For the Court to issue its immediate Order to Show Cause requiring the defendants to appear on a day certain and to show cause, if any they may have, why the automobiles which were levied upon and seized by the defendants should not be returned forthwith, to the plaintiff.

3. For an Order of the Court determining that plaintiff corporation is not the alter ego, nominee, or transferee of either George I. Norman, Jr., or Frances M. Norman, his wife.

4. For an Order suppressing all evidence the defendants obtained from said books, records, files and documents seized and removed from the premises at 4751-4753 Holladay Boulevard, and for an order forever barring the defendants from ever again obtaining such evidence by any means; including an order requiring either the destruction or return of the photostats taken from the books, records, files and documents seized and removed from the premises at 4751-4753 Holladay Boulevard.

5. For an Order of the Court suppressing as evidence the seizure of the automobiles alleged in plaintiff's complaint and for a further order barring forever the defendants from ever again obtaining a seizure of said automobiles.

6. For an Order of the Court releasing all levies filed by the defendants against the property of the plaintiff.

7. For a Judgment against the individual defendants in an amount yet to be determined to compensate for the loss suffered by plaintiff for the invasion of its constitutional rights by the defendants.

8. For such furhter and other relief in law and equity as the Court may deem reasonable and proper.

DATED this 5th day of June, 1973.

BOTTUM & LEEDY

By /s/ Richard J. Leedy
Richard J. Leedy

STATE OF UTAH
COUNTY OF SALT LAKE

FRED PAUL NORMAN, being first duly sworn upon oath deposes and says that he is the president of G.M. Leasing Corp., and makes this certification for and on behalf of said G.M. Leasing Corp., the plaintiff herein; that he has read the above and foregoing Complaint and knows and understands the contents thereof and that the same is true as to his own knowledge except as to those matters herein stated upon information and belief and as to those matters, he believes the same to be true.

SUBSCRIBED and SWORN to before me this 5th day of June, 1973.

/s/ R. J. Leedy
Notary Public
Residing at Salt Lake City, Utah

My commission expires:
[Illegible]

[Caption Omitted in Printing]

COMPLAINT IN INTERVENTION

Plaintiff alleges:

1. Jurisdiction of this action is invoked pursuant to 28 United States Code 1340; 26 United States Code 7426; and Rule 41 Federal Rules of Criminal Procedure.

2. Venue in this action is properly laid in the Central Division for the District of Utah as the actions complained of by the plaintiff against the defendants occurred in Salt Lake County, State of Utah.

3. The United States of America is made a defendant in this action as the actions complained of by the individual defendants were as agents and employees of the United States of America and also the United States of America is required to be made a party under 26 U.S.C. Section 7426; the Department of the Treasury and Internal Revenue Service is made a party to this action as the individual defendants are more directly agents and employees of the Department of the Treasury, Internal Revenue Service; Roland V. Wise, District Director, is made a defendant in this action as he has direct supervision over the individual revenue officers about whose actions the plaintiff complains and also Roland V. Wise as District Director made certain decisions and instructions about which plaintiff complains; the individual defendant Glenn Hilton is a revenue officer employed by the United States of America, Department of the Treasury, Internal Revenue Service, who committed certain acts, searches and seizures all in violation of the rights of Intervenor.

4. Intervenor is a resident of Salt Lake County, State of Utah, and is the owner of certain securities which are the subject matter of this action.

5. That sometime before the 23rd day of March, 1973, the exact date being uncertain to the plaintiff, the defendants Department of Treasury, Internal Revenue Service, and Roland V. Wise, as District Director of said Internal Revenue Service, or some other agent or employee of Roland V. Wise, whose name is unknown to plaintiff, made an assessment for income taxes alleged to be owing by George I. Norman, Jr., and Frances M. Norman, his wife; that said assessment was arbitrarry, capricious and without foundation and did not take into consideration facts, circumstances, expenses, and payments all known to the defendants and said assessment was in the sum of $951,409.93 against George I. Norman, Jr., and $154,138.54 against Frances M. Norman.

6. That at some date, the exact time not being known to plaintiff, the defendant Roland V. Wise, as District Director of Internal Revenue Service and as an authorized delegate to the Secretary of the Department of the Treasury or Internal Revenue Service, or some other agent of Roland V. Wise, who was without proper authority, made the arbitrary and capricous determination that the collection of the tax against George I. Norman, Jr., and Frances M. Norman would be jeopardized by delay and then the defendant Roland V. Wise, or an agent of his, not authorized by proper authority or law made demand, without notice, of the payment of said assessment, and, immediately thereafter, made certain levies and seizures.

7. That sometime, on or before June 7, 1973, the exact date not being known to the Intervenor, the defendant Roland V. Wise, as District Director of Internal Revenue Service or his agents who are not authorized by law, made an arbitrary and capricious determination that Intervenor, George I. Norman, III, was either the alter ego, nominee, or transferee of George I. Norman, Jr.

8. That Intervenor acquired certain shares of common stock in Emdeco International Inc. in return for cancellation of a debt owed to him for services performed.

9. That on the 5th day of June, 1973, Intervenor presented his certificate of common stock in Emdeco International, Inc. to the transfer agency Atlas Transfer, who was agent for Emdeco and requested transfer of the 7,143 shares into his name.

10. That on June 7, 1973, the defendant Glenn S. Hilton seized said certificate from Atlas Transfer and now refuses to return the same on the pretext that Intervenor is a nominee, alter ego, or transferee of George I. Norman, Jr., and that George I. Norman, Jr., owes a

substantial tax liability and that the further pretext that said tax liability and payment thereof is in jeopardy.

11. The seizure of said certificate was in violation of the Fourth and Fifth Amendments to the Federal Constitution in that it deprived Intervenor of his property without due process of law and constituted an unreasonable seizure.

12. That your Intervenor's father has disappeared leaving his family without a regular source of income and the defendants have levied and seized assets belonging to your Intervenor's father and his mother and consequently, Intervenor is without funds with which to pay living expenses and was desirous of using said stock seized by the defendants for the purpose of paying regular living expenses and also his tuition to college and that without an immediate hearing requiring the release of said stock, your Intervenor is unable to pay his regular living expenses and will be unable to attend college.

13. Your Intervenor is not the alter ego, transferee, or nominee of George I. Norman, Jr.

14. Intervenor is entitled to an order of this court releasing any levy and seizure of his Emdeco International stock and an order requiring the defendants to return said stock to him and for an order preventing and barring the defendants from ever, in the future, seizing or reacquiring said stock.

15. Intervenor is entitled to a judgment against the individual defendant, Glenn S. Hilton, in an amount not yet determined, caused by his illegal action which violated the constitutional rights of Intervenor.

WHEREFORE, Intervenor prays judgment against the defendants as follows:

1. That the Court issue its immediate order to show cause requiring the defendants to appear on a day certain

to show cause, if any they have, why the liens, levies and seizures placed on his Emdeco International stock should not be removed and released and that said stock be returned to Intervenor and that the defendants be forever barred, enjoined and prevented from ever levying and seizing upon said stock or other assets of the Intervenor.

2. For an order of the Court determining that Intervenor is not the alter ego, nominee, or transferee of George I. Norman, Jr.

3. For a Judgment against the individual defendant, Glenn S. Hilton, and Roland V. Wise, in an amount not yet determined, to compensate for the loss suffered by Intervenor for the invasion of his constitutional rights.

4. For such other and further relief that the Court deems just and proper.

DATED this 8th day of June, 1973.

BOTTUM & LEEDY

By /s/Richard J. Leedy
Richard J. Leedy
10 Exchange Place, Suite 820
Salt Lake City, Utah 84111

STATE OF UTAH
COUNTY OF SALT LAKE : ss.

GEORGE I. NORMAN, III, being first duly sworn upon oath deposes and says that he is the Intervenor herein and makes this certification; that he has read the above and foregoing Complaint and knows and understands the contents thereof and that the same is true as to his own knowledge except as to those matters herein stated upon information and belief and as to those matters, he believes the same to be true.

by /s/ George I. Norman, III
George I. Norman, III

SUBSCRIBED and SWORN to before me this 8th day of June, 1973.

Notary Public
Residing at Salt Lake City, Utah

My Commission expires:
September 18, 1976

[Certificate of Mailing Omitted in Printing]

[Caption Omitted in Printing]

SECOND AMENDED COMPLAINT

Plaintiff alleges:

1. Jurisdiction of this action is invoked pursuant to 28 United States Code 1340; 26 United States Code 7426; and Rule 41 Federal Rules of Criminal Procedure.

2. Venue in this action is properly laid in the Central Division for the District of Utah as the actions complained of by the plaintiff against the defendants occurred in Salt Lake County, State of Utah.

3. The United States of America is made a defendant in this action as the actions complained of by the individual defendants were as agents and employees of the United States of America and also the United States of America is required to be made a party under 26 U.S.C. Section 7426; the Department of the Treasury and Internal Revenue Service is made a party to this action as the individual defendants are more directly agents and employees of the Department of the Treasury, Internal

Revenue Service; Roland V. Wise, District Director, is made a defendant in this action as he has direct supervision over the individual revenue officers about whose actions as he the defendant complains and also Roland V. Wise as District Director made certain decisions and instructions about which plaintiff complains; James Livsey, Glenn S. Hilton, John W. Haacke, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness and Philip J. Clayton are individual revenue officers and agents, employed by the United States of America, Department of the Treasury, Internal Revenue Service who committed certain acts, searches and seizures all in violation of the rights of the plaintiff.

4. Plaintiff is a Utah corporation, incorporated for the purpose of leasing certain automobiles; having separate corporate existence; having four shareholders; and doing business in Salt Lake County, State of Utah.

5. An individual, George I. Norman, Jr. was managing agent of plaintiff corporation, and had custody of the books and records of said corporation in his office located at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, which premises were and are owned by Real Estate, Inc., said office was used by plaintiff not only to store their records, but also as offices of operation.

6. That sometime before the 23rd day of March, 1973, the exact date being uncertain to the plaintiff, the defendants Department of Treasury, Internal Revenue Service, and Roland V. Wise, as District Director of said Internal Revenue Service, and defendant Philip J. Clayton made an assessment for income taxes alleged to be owing by George I. Norman, Jr., and Frances M. Norman, his wife; that said assessment was arbitrary, capricious and

without foundation and did not take into consideration facts, circumstances, expenses, and payments all known to the defendants and said assessment was in the sum of $951,409.93 against George I. Norman, Jr., and $154,183.54 against Frances M. Norman.

7. That at some date, the exact time not being known to plaintiff, the defendant Roland V. Wise, as District Director of Internal Revenue Service and as an authorized delegate to the Secretary of the Department of the Treasury of Internal Revenue Service, or some other agent of Roland V. Wise, who was without proper authority, made the arbitrary and capricious determination that the collection of the tax against George I. Norman, Jr., and Frances M. Norman would be jeopardized by delay and then the defendant Roland V. Wise, or an agent of his, not authorized by proper authority or law made demand, without notice, of the payment of said assessment, and, immediately thereafter, made certain levies and seizures.

8. That sometime, throughout the course of these events, the exact date not being known to the plaintiff, the defendant Roland V. Wise, as District Director of the Internal Revenue Service, or his agents who were not authorized by law, made an arbitrary and capricious determination that the plaintiff G.M. Leasing Corp., was either the alter ego, nominee, or transferee of George I. Norman, Jr.

9. One of the individual defendants, the name not being known to plaintiff, contacted one Shirley P. Jones, Attorney at Law, who was an officer and director of plaintiff G.M. Leasing Corp. and also was an attorney for George I. Norman, Jr., and requested permission or advised that they were about to enter the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, and said Shirley P. Jones advised that permission would

not be given and that they had no authority in law to enter such premises and further that if such were done, it would be wholly contrary to law.

10. Thereupon James Livsey, Glenn S. Hilton, John W. Haacke, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness and Philip J. Clayton, without authority and law, entered the premises at 4751-4753 Holladay Boulevard, contrary to the provision of the Fourth Amendment to the Federal Constitution and proceeded to search said premises in violation of the rights of privacy of plaintiff and its agent George I. Norman, Jr.

11. In the course of searching said premises, the defendants James Livsey, Glenn S. Hilton, John W. Haacke, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness and Philip J. Clayton, without authority and contrary to the provisions of the Fourth Amendment of the Federal Constitution seized the books and records of plaintiff corporation.

12. That the seizure of the books and records and files of plaintiff corporation, according to the individual defendants, was for the purpose of levying on assets of. George I. Norman, Jr. and Frances M. Norman, and that such representations were a complete subterfuge as said books and records contained no assets and such seizure was totally unreasonable, unnecessary and that such seizure jeopardized plaintiff corporation not only from carrying on its business, but also preparation for its taxes, its tax return, for the payment of its taxes and the taxes of its agent George I. Norman, Jr., and that such seizure has caused irreparable harm and damage to plaintiff corporation.

13. Thereafter, the defendants James M. Livsey, John W. Haacke, Glenn S. Hilton, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Burt C. Applegate, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness, Philip J. Clayton and Simeon Hiller, made certain levies and seizures upon properties owned by the plaintiff, said property being in the form of automobiles; to-wit: one 1972 Stutz automobile, Serial No. 276571A172678, was seized from the premises at 2147 East 4800 South, Salt Lake City, Utah; one Rolls Royce Phantom V Limousine, Serial No. 5LUA59, was seized at 2300 East 4500 South, Salt Lake City, Utah; one 1930 Rolls Royce Phantom, Serial No. 21649 was seized from said same premises; one 1971 four-door Stutz Salon, Serial No. 276579P364856 and one 1971 Stutz, Serial No. 276571A155699 was seized from the Century Plaza Parking, Los Angeles County, California; and one Jaguar, Serial No. UC1L67176 BW was seized at 2501 Olympus Drive, Salt Lake City, Utah.

14. That said levies and seizures of plaintiff's property were without authority of law and in violation of the Fourth Amendment of the Federal Constitution and deprived plaintiff of its property without due process of law in violation of the Fifth Amendment of the Federal Constitution.

15. That since the seizure of said automobiles the plaintiff corporation is unable to carry on its business which may result in substantial loss of revenue and income to said corporation.

16. Plaintiff corporation is not the alter ego, nominee, or transferee of either George I. Norman, or Frances M. Norman.

17. The defendants should be required to forthwith immediately account for all items seized from the premises at 4751-4753 Holladay Boulevard.

18. On or about May 30, 1973, the defendants admitting the illegality of their actions returned boxes of books and records which they indicated were all of the books and records taken from the premises at 4751-4753 Holladay Boulevard.

19. At the time of the return of the boxes containing books and records, an individual defendant Roland V. Wise, stated to plaintiff's agent, an attorney Walter Ellett, that the defendants had indeed searched through those books and records prior to returning them to plaintiff and had made photostats of said books and records.

20. That by virtue of the illegal actions of the defendants and to prevent said defendants from reaping the fruit of their illegal actions, not only should the photostats of the books and records be suppressed from the defendants, but they should be forever barred from using any such photostats of books and records illegally obtained in any proceeding of any kind and should be further barred from reacquiring the same by any means.

21. Plaintiff is entitled to an order of this Court releasing the levies and seizures upon the automobiles illegally obtained by defendants and requiring the defendants to return said automobiles to plaintiff and for an order of this Court preventing and barring the defendants from ever acquiring said automobiles.

22. That in addition to the loss caused by the seizure of the records and seizure of the automobiles, the plaintiff has sustained loss by virtue of the defendants releasing two of said automobiles to a lienholder of said automobiles without notice to plaintiff and said lienholder selling said automobiles at far below their market value.

23. Plaintiff is entitled to a judgment against the individual defendants in the amount of $500,000.00 for

damages caused by their illegal action which was violating the constitutional rights and privileges for which the individual defendants should be penalized in the amount of $25,000.00 each as punitive damages.

WHEREFORE, plaintiff prays judgment against the defendants as follows:

1. That the Court issue its immediate order to show cause requiring the defendants to appear on a day certain and to show cause, if any they have, why the photostats of the books, papers, records, files and documents of plaintiff corporation should not be returned to plaintiff, or destroyed, said photostats being from the books, papers, records, files and documents seized from the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah.

2. For the Court to issue its immediate Order to Show Cause requiring the defendants to appear on a day certain and to show cause, if any they may have, why the automobiles which were levied upon and seized by the defendants should not be returned forthwith, to the plaintiff.

3. For an Order of the Court determining that plaintiff corporation is not the alter ego, nominee, or transferee of either George I. Norman, Jr., or Frances M. Norman, his wife.

4. For an Order suppressing all evidence the defendants obtained from said books, records, files and documents seized and removed from the premises at 4751-4753 Holladay Boulevard, and for an order forever barring the defendants from ever again obtaining such evidence by any means; including an order requiring either the destruction or return of the photostats taken from the books, records, files and documents seized and removed from the premises at 4751-4753 Holladay Boulevard.

5. For an Order of the Court suppressing as evidence the seizure of the automobiles alleged in plaintiff's complaint and for a further order barring forever the defendants from ever again obtaining a seizure of said automobiles.

6. For an Order of the Court releasing all levies filed by the defendants against the property of the plaintiff.

7. For a Judgment against the individual defendants for general damages in the amount of $500,000.00 and for punitive damages in the amount of $25,000.00 to compensate for the loss suffered by plaintiff for the invasion of its constitutional rights by the defendants.

8. For such further and other relief in law and equity as the Court may deem reasonable and proper.

DATED this 11th day of October, 1973.

by /s/ Richard J. Leedy
Richard J. Leedy
Attorney for Plaintiff
10 Exchange Place, Suite 309
Salt Lake City, Utah 84111

[Certificate of Mailing Omitted in Printing]

[Caption Omitted in Printing]

PRE-TRIAL ORDER

Based upon stipulation of counsel the following are to be the issues tried in the above-entitled matter:

1. Was G.M. Leasing Corp., the alter ego, nominee, or transferee George I. Norman, Jr. (it has been stipulated that the defendants have the burden of proof on this issue); in the event the defendants fail to sustain their burden of proof the court should order the return of all

property seized from G.M. Leasing Corporation together with a further Order that the defendants should never again attach, levy, or seize any property belonging to G.M. Leasing Corporation for the tax liabilities of George I. Norman, Jr.

2. Did the search of the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah and the seizure of books and records thereat violate the plaintiff's constitutional rights (if the search and seizure at 4751-4753 Holladay Boulevard, Salt Lake City, Utah violated the plaintiff's constitutional rights the court should order a destruction of all photostats that were made of said books and records by the defendants and that such photostats of the books and records and examinations made thereof, should in no way, ever be used against the plaintiff for any purpose.

3. As a question of law, does this court have jurisdiction to award damages against the individual defendants assuming that it is found that the defendants violated the constitutional rights of the plaintiff.

4. Assuming that, after evidence has been presented, the court finds that the constitutional rights of plaintiff were violated and that the plaintiff is entitled to an award of damages as a result thereof, the issue remains whether or not the conduct of the individual defendants involved was intentional and whether or not the plaintiff is entitled to punitive damages as a result thereof.

5. It is stipulated that all of the individual defendants, with the exception of the individual defendant Roland V. Wise, were involved and took part in the search and seizure in the premises located at 4751-4753 Holladay Boulevard. Assuming the court finds that the plaintiff is entitled to damages, what are the damages that should be awarded as compensation for the loss and injury suffered

by the plaintiff and what damages should be awarded as punitive damages against the defendants.

6. Is the intervenor George I. Norman, III the alter ego, nominee, or transferee of George I. Norman, Jr. (if the court finds that George I. Norman, III is not the alter ego, nominee, or transferee of George I. Norman, Jr., then the court should order the return of the property seized by the defendants from the intervenor to intervenor) it has been stipulated that the defendants have the burden of proof to determine that George I. Norman, III, intervenor, is the alter ego, nominee, or transferee of George I. Norman, Jr.

7. As an issue of law, if the assessment of taxes against George I. Norman, III was arbitrary and the determination to issue a jeopardy assessment was arbitrary and not proper, are the plaintiff and intervenor entitled to relief from such arbitrary assessment or jeopardy assessment.

8. Assuming that the plaintiff and intervenor are entitled to relief, to what relief are they entitled.

9. As an issue of fact was the assessment of taxes against George I. Norman, Jr. arbitrary and was the jeopardy assessment arbitrary and improperly determined and issued.

DATED this 12th day of October, 1973.

BY THE COURT:

WILLIS RITTER
Chief Judge
United States District Court
for the District of Utah

The Parties stipulate to the foregoing Pre-Trial Order.

DATED this 19th day of September, 1973.

/s/ Richard J. Leedy
RICHARD J. LEEDY
Attorney for Plaintiff and
Intervenor

/s/Michael B. Andolina
MICHAEL B. ANDOLINA
Attorney for Defendants

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ANSWER AND COUNTERCLAIM

Come now the defendants to the above-entitled action, by their attorney, C. Nelson Day, United States Attorney for the District of Utah, and for their answer to plaintiff's Second Amended Complaint, answer and allege as follows:

I

Defendants deny the allegations contained in Paragraph 1 of plaintiff's Second Amended Complaint except admit that this Court has the limited jurisdiction under Section 7426 of the Internal Revenue Code of 1954 (26 U.S.C., Section 7426) to determine the propriety of the seizure by the defendant, United States of America, of the automobiles which are the subject matter of this action.

II

Defendants admit that venue of this action is properly laid in the Central Division of this District.

III

Defendants admit that the sovereign defendant, United States of America, is a proper party to that portion of this action seeking return of automobiles allegedly levied upon wrongfully by said defendant. Defendants specifically deny that the remaining defendants are properly named as defendants in this action.

IV

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of plaintiff's Second Amended Complaint and therefore deny those allegations.

V

Defendants deny the allegations contained in Paragraph 5 of plaintiff's Second Amended Complaint.

VI

Defendants deny the allegations contained in Paragraph 6 of plaintiff's Second Amended Complaint except admit that a delegate of the Secretary of the Treasury of the United States made assessments against the delinquent-taxpayers, George I. Norman, Jr. and Frances M. Norman, for their federal income tax liabilities.

VII

Defendants deny the allegations contained in Paragraph 7 of plaintiff's Second Amended Complaint except admit that the assessments made against the delinquent-taxpayers, George I. and Frances M. Norman, were made under the authority of Section 6861 of the Internal Revenue Code of 1954 providing for jeopardy assess-

ments and that in an effort to effect collection thereof levies were made upon the property of the delinquent-taxpayers.

VIII

Defendants deny the allegations contained in Paragraph 8 of plaintiff's Second Amended Complaint except admit that a determination has been made by a delegate of the Secretary of the Treasury of the United States that the plaintiff corporation is an alter ego of the delinquent-taxpayer, George I. Norman, Jr.

IX

Defendants deny the allegations contained in Paragraph 9 of plaintiff's Second Amended Complaint.

X

Defendants deny the allegations contained in Paragraphs 10 and 11 of plaintiff's Second Amended Complaint except admit that the named defendants entered the premises located at 4751-4753 Holladay Boulevard and did seize the books and records contained therein.

XI

Defendants deny the allegations contained in Paragraph 12 of plaintiff's Second Amended Complaint.

XII

Defendants admit the seizures referred to in Paragraph 13 of plaintiff's Second Amended Complaint but deny that the property seized was that of the plaintiff.

XIII

Defendants deny the allegations contained in Paragraphs 14 through 17 of plaintiff's Second Amended Complaint.

XIV

Defendants admit that the books and records seized from the premises of 4751-4753 Holladay Boulevard were voluntarily returned by the defendants but deny that this action constituted an admission of the illegality of the seizure.

XV

Defendants admit that the books and records seized by them had been photostated prior to their return.

XVI

Defendants deny the allegations contained in Paragraphs 20 through 23 of plaintiff's Second Amended Complaint.

WHEREFORE, the defendants pray as follows:

1. That this court order and adjudge that the plaintiff takes nothing by its complaint and that its cause of action be dismissed.

2. That the defendants have their costs and such other and further relief as to this Court seems just and proper.

In further answer to the plaintiff's Second Amended Complaint, the defendants assert the following:

FIRST AFFIRMATIVE DEFENSE

That the individual defendants as agents and employees of the sovereign, United States of America, are not subject to suit in this action and the present suit may

only be maintained, if at all, against the sovereign, United States of America.

SECOND AFFIRMATIVE DEFENSE

Except as to the issue of the propriety of the seizure of the automobiles which are the subject of this suit, this Court lacks jurisdiction over the sovereign, United States of America, which has not consented to be sued in this action.

Having fully answered the allegations contained in plaintiff's Second Amended Complaint, the counterclaimant, United States of America, complains and alleges as follows:

A. Counterclaimant is seeking to obtain a declaration from this Court that the plaintiff-counterdefendant, G.M. Leasing Corp., is an alter ego of the delinquent-taxpayer, George I. Norman, Jr., and an order that the federal tax liens attaching to the property of the said delinquent-taxpayer, be foreclosed against the property of the plaintiff-counterdefendant, all as is more fully set forth below.

B. This counterclaim has been authorized and requested by the Chief Counsel, Internal Revenue Service, a delegate of the Secretary of the Treasury of the United States, and is brought under the direction of the Attorney General of the United States pursuant to the provisions of Sections 7401 and 7403 of the Internal Revenue Code of 1954.

C. Jurisidction of this counterclaim is conferred upon this Court by Sections 1340 and 1345 of Title 23, United States Code, and Section 7402 of the Internal Revenue Code of 1954, for the reason that this is a civil action arising under the Internal Revenue laws of the United States.

D. On March 19, 1973, a delegate of the Secretary of the Treasury of the United States made assessments against the delinquent-taxpayer, George I. Norman, Jr., for the amounts and periods set forth in the schedule below:

Type of Tax	Taxable Period	Date of Notice and Demand	Amount of Assessment	Unpaid Assessed Balance
Income	1970	3/19/73	$280,000.00(T) 84,000.00(P) 42,099.34(I)	$406,099.37
Income	1971	3/19/73	397,353.94(T) 119,206.19(P) 28,750.46(I)	545,310.59
			TOTAL ASSESSED UNPAID BALANCE	$951,409.93

(T) Tax Assessed.
(P) Penalty assessed pursuant to Sections 6651(a) and 6653(a) of the Internal Revenue Code of 1954.
(I) Interest assessed.

E. Although notices of the assessments described in Paragraph D above were given to the delinquent-taxpayer, George I. Norman, Jr., and demands for payment thereof were made, the outstanding balance of the said assessments has not been satisfied and there remains due and owing to the United States of America from said taxpayer the total amount of $951,409.93, plus interest as provided by law.

F. The unpaid balance due on the assessments described in Paragraph D above is secured by federal tax liens which encumber all property and rights to property of the delinquent-taxpayer, George I. Norman, Jr., on the dates the assessments were made, including any after-

acquired property, and including the assets of the plaintiff-counterdefendant corporation.

G. Based on information and belief the plaintiff-counterdefendant corporation, G.M. Leasing Corp., is a corporation that was formed or caused to be formed by the delinquent taxpayer, George I. Norman, Jr. At all times pertinent hereto, the said delinquent-taxpayer controlled the affairs of the corporation, and had controlled the affairs of said corporation as an instrumentality and tool of said George I. Norman, Jr.

H. Based on information and belief the plaintiff-counterdefendant, G.M. Leasing Corp., is the alter ego of the delinquent-taxpayer, George I. Norman, Jr., and is not a separate corporate entity which is capable of holding title to assets presently in its name.

WHEREFORE, the counterclaimant, United States of America, prays as follows:

1. That this Court find, determine and adjudge that the plaintiff-counterdefendant corporation, G.M. Leasing Corp., is the alter ego of the delinquent-taxpayer, George I. Norman, Jr.; that said corporation was never a separate corporate entity; and that title to all assets, both real and personal, of said corporation, including the automobiles which are the subject matter of this suit, is in the delinquent-taxpayer, George I. Norman, Jr.

2. That this Court find, determine and adjudge that the United States has federal tax liens which attach to all property and rights to property of the delinquent-taxpayer, George I. Norman, Jr., including the assets of the plaintiff-counterdefendant corporation, G.M. Leasing Corp., and including the automobiles which are the subject matter of this action.

3. That this Court order that the federal tax liens attaching to the subject automobiles be foreclosed, that

said automobiles be sold in accordance with the normal procedure of this Court, and that the proceeds of such sale be distributed to the United States towards satisfaction of its liens.

4. That the United States be granted its costs in this action and such other and further relief as to this Court seems just and proper.

/s/C. Nelson Day
C. NELSON DAY
United States Attorney

Copy of the above and foregoing Answer and Counterclaim served on Richard J. Leedy, Attorney for Plaintiff, at 10 Exchange Place, Salt Lake City, Utah, 84111, by mail, this 1st day of November, 1973.

/s/ Mary Brochmeier
Secretary

[Caption Omitted in Printing]

REPLY

COMES NOW the plaintiff and replies to the defendant's counterclaim as folows:

FIRST DEFENSE

(a) Plaintiff denies that defendant is entitled to the relief as shown in paragraph (a) of defendant's counterclaim and therefore denies all of the allegations contained in same paragraph (a).

(b) Plaintiff is without sufficient information to form a belief as to the truth and veracity of the allegations contained in paragraph (b) of defendant's counterclaim and therefore denies the same.

(c) Plaintiff denies the allegations of law and allegations of fact contained in paragraph (c) of defendant's counterclaim.

(d) Defendant is without sufficient information to form a belief as to the truth and veracity of the allegation that a delegate of the Secretary of Treasury of the United States made assessments against George I. Norman, Jr. or that George I. Norman, Jr. was a delinquent taxpayer but the plaintiff admits that a letter outlining an assessment as alleged in paragraph (d) of defendant's counterclaim which was delivered to the former residence of George I. Norman, Jr.

(e) Plaintiff denies allegations contained in paragraph (d) of defendant's counterclaim.

(f) The plaintiff admits that certain leins have been asserted by the defendant and denies all the remaining allegations of paragraph (F) of the defendant's counterclaim.

(g) Plaintiff denies the allegations of paragraph (g) of the defendant's counterclaim.

(h) Plaintiff denies the allegations of paragraph (H) of defendant's coumterclaim.

WHEREFORE plaintiff prays defendant take nothing by way of its counterclaim and that costs be awarded to the plaintiff.

DATED this 8th day of January, 1974.

/s/Richard J. Leedy
Richard J. Leedy
Attorney for Plaintiff
10 Exchange Place, Suite 309
Salt Lake City, Utah 84111
Telephone: 531-1007

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MOTION TO DISMISS

COMES NOW the plaintiff and interveneor, after the defendants have completed their presentation of evidence with regards to the issue of alter ego, nominee, and transferee and respectfully moves the court for judgment in accordance with the prayer of the complaint and on the grounds for the reason the defendants' have not sustained its burden of proof and upon the facts and law the defendants' have shown no right to relief.

DATED this 19th day of February, 1974.

/s/Richard J. Leedy
RICHARD J. LEEDY
Attorney for Plaintiff
10 Exchange Place, Suite 309
Salt Lake City, Utha 84111
Telephone: 531-1007

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FINDINGS OF ACT AND CONCLUSIONS OF LAW

Trial on this matter came on regularly on the 10th day of May, 1974; the plaintiff and intervenor were represented by counsel, Richard J. Leedy, Attorney at Law; the defendants were represented by counsel, Michael B. Andolina, Esq. Durrell Nielsen, Esq., C. Garold Sims, Esq., James M. Dunn, Esq., and C. Nelson Day, U.S. Attorney; the plaintiff and intervenor presented evidence

supporting their claims; and the defendant presented evidence supporting its claim that the plaintiff and intervenor were alter-egos, nominees, or transferees of George I. Norman, Jr. and Frances M. Norman and further evidence to support its counterclaim for foreclosure on the assets of plaintiff and intervenor and, after resting, the plaintiff and intervenor moved for Judgment and Dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure and the court, after reviewing the evidence and the memorandums and responsive memorandums submitted by each party and arguments of counsel and, based thereon, makes the following:

FINDINGS OF FACT

1. Plaintiff is a Utah Corporation.

2. Intervenor is an individual residing in Salt Lake County, Utah.

3. 4751-4753 Holladay Boulevard were the offices of plaintiff G.M. Leasing Corporation and the residence of intervenor, George I. Norman III.

4. On the 23rd day of March, 1973, employees of the Internal Revenue Service forced entry and entered the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, for the purpose of searching for books and records to be used as evidence against George I. Norman, Jr. and Frances M. Norman.

5. On the 25th day of March, 1974, employees of the Internal Revenue Service again forced entry and searched the premises at 4751-4753 Holladay Boulevard, Salt Lake City, Utah, and seized books and records belonging to plaintiff and others to use as evidence against George I. Norman, Jr. and Frances M. Norman.

6. That the employees of the Internal Revenue Service committing said search and seizure were defendants

James M. Livsey, John W. Haacke, Glen S. Hilton, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Burt C. Applegate, Ronald P. Harrington, Tim W. Elison, Lawnie, C. Mayhew, Thomas L. Harkness and Philip J. Clayton.

7. The defendants did not obtain a search warrant for the entry into 4751-4753 Holladay Boulevard for search and seizure of records nor did they obtain or serve a summons for seizing the books and records.

8. That the above named defendants did intentionally commit said forced entry, search and seizure knowing full well that they were violating the rights of G.M. Leasing Corporation, intervenor and others.

9. Two of the individual defendants were employed in the IRS Intelligence Division for conducting criminal investigations.

10. Defendant Philip Clayton maliciously committed said forced entry, and search and seizure.

11. After the commencement of this action, the defendants returned the books and records that had been seized at 4751-4753 Holladay Boulevard but photostated said books and records and now retain said photostats.

12. The defendants levied upon and seized all of the assets of G.M. Leasing Corp. which include, to wit: one Stutz automobile, Serial No. 276571A172678; one 1972 Stutz automobile, Serial No. 276571A172863; one Rolls Royce Phantom V Limousine, Serial No. 5LUA59; one 1930 Rolls Royce Phantom, Serial No. 21649; one 1971 four-door Stutz Salon, Serial No. 276579P364856; one 1971 Stutz, Serial No. 276571A155699; one Jaguar, Serial No. UC1L67176 BW; and a bank account at Zions First National Bank in Salt Lake City, Utah.

13. The defendants disposed of two Statz automobiles; one 1971 four-door Stutz Salon, Serial No.

276579P364856; and one 1971 Stutz, Serial No. 276571A155699; the remaining automobiles owned by G.M. Leasing Corp. are under seizure and being stored by the defendants at 50 West 300 South, Salt Lake City, Utah.

14. The defendants seized Certificate #SL012905 of Emdeko International, Inc. bearing 7,143 shares of its common stock from intervenor.

15. All seizures took place pursuant to a jeopardy assessment for federal income taxes, penalties, and interest allegedly owed by George I. Norman, Jr. and Frances M. Norman for the years 1970 and 1971.

16. The seizures were based on defendants determination that plaintiff and intervenor were alter-egos, nominees, or transferees of George I. Norman, Jr. and Frances M. Norman.

17. The assessment of income taxes failed to take into consideration a $289,800.00 payment by George I. Norman, Jr. and the penalties and interest were also assessed without consideration of the $289,800.00 payment.

18. The assessment included items of income which were not in fact income, including $115,000.00 in alleged income from an alleged sale of securities which was not a sale of securities and was not income.

19. The assessment did not give credit for business expenses incurred by George I. Norman, Jr. and Frances M. Norman, and George I. Norman, Jr. and Frances M. Norman had extraordinarily high business expenses.

20. The assessment of income taxes, penalties, and interest against George I. Norman, Jr. and Frances M. Norman for the years 1970 and 1971 was erroneous.

21. No income or liability for federal income taxes, penalties or interest for George I. Norman, Jr. or Frances M. Norman was proven.

22. George I. Norman, Jr. and Frances M. Norman have no liability for federal income taxes, penalties or interest for the years 1970 and 1971.

23. G.M. Leasing Corp. was formed and incorporated for the legitimate business purpose of leasing automobiles.

24. The assets of G.M. Leasing Corp. were not transferred to it by George I. Norman, Jr. or Frances M. Norman for insufficient consideration.

25. G.M. Leasing Corp. was not undercapitalized at its formation.

26. G.M. Leasing Corp. was not set up for fraudulent purposes or for the purpose to contravene law or contract.

27. G.M. Leasing Corp. had a board of directors and officers.

28. G.M. Leasing Corp. has engaged in substantial business activity in preparation for its business purpose of leasing automobiles.

29. G.M. Leasing Corp. was not solely controlled by George I. Norman, Jr. or Frances M. Norman.

30. G.M. Leasing Corp. was not a transferee of George I. Norman, Jr. or Frances M. Norman.

31. G.M. Leasing Corp. was not an alter-ego of George I. Norman, Jr. or Frances M. Norman.

32. G.M. Leasing Corp. was not a nominee of George I. Norman, Jr. or Frances M. Norman.

33. With respect to 7,000 shares of the 7,143 share certificate of Emdeko International, Inc. common stock seized from intervenor George I. Norman, III, George I. Norman, III, owned 7,000 shares and was not an alter-ego, nominee, or transferee of George I. Norman, Jr. or Frances M. Norman.

34. With respect to 143 shares of Emdeko International, Inc. common stock seized from George I. Norman, III, George I. Norman, III, was acting as alter-ego, nominee, or transferee of George I. Norman, Jr. and Frances M. Norman.

From the above findings of fact, the court makes the following:

CONCLUSIONS OF LAW

1. The defendants James M. Livsey, John W. Haacke, Glen S. Hilton, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Burt C. Applegate, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness and Philip J. Clayton, committed an illegal search and seizure of the offices of plaintiff and the residence of intervenor in violation of the 4th Amendment to the United States Consitution and plaintiff and intervenor are entitled to Judgment for damages against those defendants for the invasion of their privacy in an amount yet to be determined and the photostats of all illegally seized books and records now in the possession of the defendants should be destroyed and any use of those photostats of books and records would be illegal.

2. Plaintiff and intervenor are entitled to a Judgment for punitive damages from the defendant Philip J. Clayton in an amount yet to be determined.

3. The defendants counterlaim for foreclosure should be dismissed with prejudice.

4. The defendants should be ordered to return all of the seized assets of G.M. Leasing Corp. and intervenor; which are: one 1972 Stutz automobile Serial No. 276571A172678; one 1972 Stutz automobile, Serial No. 276571A172863; one Rolls Royce Phantom V Limousine, Serial No. 5LUA59; one 1930 Rolls Royce

Phantom, Serial No. 21649; one Jaguar, Serial No. UC1L67176 BW; without cost for storage in the same condition as said assets were at the time of said illegal seizure and 7,000 shares of Emdeko International, Inc. stock to intervenor together with 143 shares of Emdeko International, Inc. stock to G. I. Norman, Jr., Frances M. Norman or any other rightful claimant. All levies and liens against said assets should be removed and Judgment against the defendant United States of America in favor of plaintiff should be awarded in an amount yet to be determined for the value of the two automobiles disposed of by defendants.

DATED this 24th day of May, 1974.

BY THE COURT:

/s/Willis W. Ritter
HONORABLE WILLIS W. RITTER

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JUDGMENT

Trial on this matter came on regularly on the 10th day of May, 1974; the plaintiff and intervenor were represented by counsel, Richard J. Leedy, Attorney at Law; the defendants were represented by counsel, Michael B. Andolina, Esq., Durrell Nielsen, Esq., C. Garold Sims, Esq., James M. Dunn, Esq., and C. Nelson Day, U.S. Attorney; the plaintiff and intervenor presented evidence supporting their claims; and having previously made finding of fact and conclusions of law, and based thereon:

IT IS HEREBY ORDERED that the plaintiff and intervenor have judgment for damages in an amount yet to be determined against the defendants James M. Livsey,

John W. Haacke, Glen S. Hilton, Keith E. Finley, Jr., Clark D. Holfeltz, Joseph J. White, Clesse S. Hilton, Burt C. Applegate, Ronald P. Harrington, Tim W. Elison, Lawnie C. Mayhew, Thomas L. Harkness and Philip J. Clayton.

IT IS FURTHER ORDERED that the plaintiff and intervenor have Judgment for punitive damages from the defendant Philip J. Clayton in an amount yet to be determined.

IT IS FURTHER ORDERED that all illegally seized books and records now in the possession of the defendants be destroyed and any use of those photostats of books and records is illegal.

IT IS FURTHER ORDERED that the defendants counterclaim for foreclosure is dismissed with prejudice.

IT IS FURTHER ORDERED that the defendants return all of the seized assets of G.M. Leasing Corp. and intervenor; which are: one 1972 Stutz automobile Serial No. 276571A172678; one 1972 Stutz automobile, Serial No. 276571A172863; one Rolls Royce Phantom V Limousine, Serial No. 5LUA59; one 1930 Rolls Royce Phantom, Serial No. 21649; one Jaguar, Serial No. UC1L67176 BW, without cost for storage in the same condition as said assets were at the time of said illegal seizure and 7,000 shares of Emdeko International, Inc. stock to intervenor together with 143 shares of Emdeko International, Inc. stock to G. I. Norman, Jr., Frances M. Norman or any other rightful claimant.

IT IS FURTHER ORDERED that all levies and liens against said assets are removed.

IT IS FURTHER ORDERED that the plaintiff have Judgment in an amount yet to be determined for the value of the two automobiles disposed of by defendants.

DATED that 24th day of May, 1974.

BY THE COURT:

/s/ Willis W. Ritter
HONORABLE WILLIS W. RITTER

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